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(18,606.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 86.

THE ROYAL INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

RUPERTO MARTIN, AS EXECUTOR OF THE WILL OF FRANCISCO MARTIN, DECEASED.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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1 In the District Court of the United States for Porto Rico.

At a stated term of the district court of the United States of America, within and for the district of Porto Rico, begun and held at the court rooms in the city of Ponce, on the second Monday of May, being the twelfth day of that month, in the year of our Lord one thousand nine hundred and two and of the Independence of the United States of America the one hundred and twenty sixth.

Present: The Honorable Wm. H. Holt, judge.

Among the proceedings had were the following, to wit:

GUADELUPE VASQUEZ, Widow of Francisco Martin; Ruperto Martin, Heir and Executor of *of* the Will of Francisco Martin, and Encarnacion, Artoro, Ines, Juan, and Francisca Martin, the Latter a Minor, Who Sues by Guadelupe Vasquez, Her Next Friend, Heirs of Francisco Martin, Deceased, *against* THE ROYAL INSURANCE COMPANY, a Corporation.	C L. # 110. Assumpsit. Damages, ($20,000.00).

Be it remembered that heretofore, to wit, on the 21st day of February, 1902, came the plaintiffs by their attorney and filed in the clerk's office of this court a declaration in this cause, which declaration is clothed in the words and figures following, to wit:

Declaration.

2 In the United States District Court for Porto Rico.

GUADELUPE VASQUEZ, Widow of Francisco Martin; RUPERTO Martin, Heir and Executor of the Will of Francisco Martin, and Encarnacion, Arturo, Ines, Juan, and Francisca Martin, the Latter a Minor, Who Sues by Guadelupe Vasquez, Her Next Friend, Heirs of Francisco Martin, Deceased,
against
THE ROYAL INSURANCE COMPANY, a Corporation.

Assumpsit. Damages, twenty thousand dollars.

Guadelupe Vasquez, widow of the late Francisco Martin, Ruperto Martin, heir and executor of the will of Francisco Martin, and Encarnacion, Arturo, Ines, Juan and Francisca Martin, the latter a minor who sues by her next friend Guadelupe Vasquez, all heirs of the late Francisco Martin, citizen- of Porto Rico and resident- of Ponce, by their *their* attorney Charles M. Boerman, complain of The Royal Insurance Company, a c-rporation organised under the laws England and having an office and doing business in the island of Porto Rico, within this judicial district, defendant, of a plea of

trespass on the case on premises. For that whereas the defendant on or about the first of January 1898 made and renewed its policy of insurance and delivered the same to the late Francisco Martin above mentioned, and thereby then and there, in consideration of a certain amount of pounds sterling, equivalent then to the sum of $378.40 to it paid by said Francisco Martin did insure him against loss or damage by fire to the amount of sixteen hundred pounds sterling English money, equivalent to eight thousand dollars, on the building situated at Coto Laurel, district of Ponce, Porto Rico, built of wood and covered with metal and also the goods, chattels and merchandise and provisions in said building kept and contained and the defendant for the consideration aforesaid did by the said policy promise and agree to make good and satisfy unto the said
3 Francisco Martin, his executors, administrators, heirs and assigns all such loss or damage not exceeding the said sum of eight thousand dollars as should happen by fire to the said property whereon the said insurance was so made as aforesaid, such loss or damage to be estimated according to the true and actual value of the said property at the time such loss or damage should happen, all however according to the conditions attached to and *had* made a part of said policy of insurance, expressed in the Spanish language, a copy of which conditions together with their true translation into the English language hereafter follow, to wit.

Translation into English.

Conditions of This Policy.

1. Any bad description of any part of the property *by* which is to be insured, or of any building where the said property is deposited or the negligence to notify the existence of some dangerous trade, or of some apparatus to produce heat, or the negligence to acknowledge the existence of any material circumstance which necessarily must be taken into consideration to appreciate the danger, at the time of the insurance or after, will annul this policy which covers the property so affected by bad description or negligence.

2. If after the danger has been considered by the company, something *something* was done to the said property or building where the said property is deposited, augmenting the danger, or if the said property is removed to another building, or if for any cause the danger is augmented, without the authorization of the company, or if the *or if the* holder refuses or neglects to pay those additional premiums required on account of the augment of danger, this policy becomes null, and if on account of such an alteration or addition, or any cause, the company or its agents wish to end the insurance, said company or agents will have right to do so, by simply notifying the holder or his representatives, and will also have right to
4 require the devolution of said policy for its cancellation, providing that in such a case, the company will have to return to the holder the amount of the premium paid and also the amount

corresponding in legal proportion to the time lacking for the expiration of the policy.

This policy does not cover properties in deposit or in commission if they are not plainly described as such, and also not porcelain, crystals, mirrors, precious stones, clocks or watches, things of great value, medals, cloths, manuscripts, engravings, paintings, designs, sculptures, musical, mathematical and scientific instruments samples, models and moulds, if they are not plainly described in the policy, also not bonds or contracts, obligations, bills of exchange, promissory notes, stamps, commercial books, powder and loss or loss or damages caused by fire occur-ed during an invasion or presence of enemies, rebellion, insurrection, riot or disturbance, military government, martial law, if it is not proved to -he satisfaction of the company that said fire was not caused by and did not have any relation with the said invasion, rebellion, military government or martial law. This policy does not cover the loss or damages caused by volcanoes, earthquakes, hurricanes or other eruptions, convulsions or its results, also not those caused by the burning of forests, woods, plains, etc., and those caused bt fermentation, or by the spontaneous heating of the insured object, or the goods or merchandise destroyed or spoiled while under a treatment requiring the application of heat through the fire, also not loss or damages caused by explosion except those caused in a building and its properties by the explosion of gas in the same building, providing that the gas is not manufactured in the building. If a building or a part of it falls down, the fall not being caused by fire, any insurance made with this company on the said building or its contents, will thereby end.

4. No insurance proposed to the company will be considered in force and vigor until the premium is paid. No receipt of premiums will be *worth* if it is not one of those printed and issued by the office of the company and signed by one of its employees or agents and all conditions or preventions contained or endorsed in those receipts will be considered a part of this policy.

5. This policy is not in vigor if any of the properties insured in its pass to another person by any title not proceeding from testamentary dispositions, or from the operation of laws, if the *if the* company is not informed and the insurance in favor of the new owner is not declared by a note endorsed to this policy by the company or its representative.

6. If any property insured in the present policy is lost by fire the holder will notify the company or its agents and in no more than fifteen days give them a relation as plain as possibly he can make of the property and the articles or ogjects spoiled or destroyed by the fire and also other articles and things (if any) issued in this policy, stating the value of everything respectively, taking into consideration its value at the time of the fire and the legal amount of the loss or damages caused by the fire to the said articles and property, taking into consideration the state, condition and value of the same at the start of the fire and also the interests that the holder had in them, and in order to enforce that relation or representation

the holder will present all proffs and explanations and all other reasonable evidence required by the company or its representative and also, if required, a declaration in legal form, as to the truth of his relation and in case of non-fulfillment of these conditions or any of them no claim based on the said loss or damages will be valid and payable, until the said notice, relation account, explanations and evidence are made and presented and until the declaration in legal form is given if required. The insured objects damaged or not, cannot be allowed to the company.

6 7. In the claims for loss and damages no profit of any kind shall be included, and if the claim has in any part of it a fraudulent character or if a false declaration was given in legal form to enforce said claims, or if the fire is caused by the holder or on his instigation or knowledge or consent, he will lose all benefice that he may receive from this policy.

8. In the loss or damages occurred by moving the insured objects in order to save them from the effects of the conflagration, this company will only contribute so that the amount insured in the present policy has the total value of the property before the removal, but the company is not responsible for the part of the property, object or article stolen and also not for the expenses made by the holder or others without to obtain before the permission of the company or the agents.

9. The company will have ri-ht, if convenient to place or to restore the property spoiled or destroyed, or any part of the said property, instead of paying cash the amount of the loss or damages, or will have right to agree unami-ously with another insurance company to do so, and that restitution will be considered sufficient, if it is firmly executed, even if the property is not restored to its former appearance and conditions.

10. In case of loss or damages caused by fire in any building, or property or effects existing in the said building, where a claim can be made to the holder of this policy the company, free in this case of all charges for offences or insults will have right by itsself, or by its employees or authorized agents etc., etc., to enter in possession for a reasonable time of all buildings, properties or effects, for any reasonable object in relation with this insurance, and this policy is a testamony, permit, license for authorization to that effect.

7 11. The holder will have to notify the company if any insurance or insurances have been made somewhere else on the properties insured hereby, or any part of them, and those details have to be endorsed in this policy, and if the said notification and the corresponding endorsement are not made, the holder will not have right to any benefit, according to this policy.

12. If at the time of any loss or damages caused by fire to any properties hereby insured, there are other insurances covering the same property if they have been done by this holder or any other person this company will not have to pay, in contribution to said loss or damages, more than the amount corresponding to it in legal proportion.

13. If in any case there are other insurances, made by this holder or any other person or any property covered by this policy, exclusively or with any other property comprehended in the same danger or risk and subject to it only and if a proportional division must be made between those insurances, the one covered by this policy will also be included in the said distribution or division.

14. If there was in any time disagreement between the company and the holder or any other person making any reclamation based on this policy about the amount that has to be paid for any loss or damages caused by fire, all those disagreements, when and where they occur, have to be submitted to the decision of a person not interested in the matter elected by the party making the reclamation and by the company (except where the company, suspecting a fraud claims not to be responsible, or where the above mentioned conditions or a part of them have not been carried out, or when the person making the reclamation has in any manner lost all rights, according to this policy. In case of disagreement in the decision, two persons not interested in the matter have to be elected, one by the party making the reclamation, and the other by the company or its agent, manager or vice manager it being understood that if any of the
8 parties refuses or neglects to elect an arbitrator in ninety days after receiving order to make the election and after having presented all proffs, evidence and explanations as agreed in the antecedent condition No. 6, the other party is authorized to elect both arbitrators and in case of a disagreement between those arbitrators as to the amount payable, said disagreement must be submitted to the decision of a third person elected by the two arbitrators before the consultation of the matter, and in case of death of one of the arbitrators or the third one, another one will be elected by one of the parties or by the arbitrators (it depends on who elected before the dead arbitrator) and the decision of the arbitrators will be the decisive evidence as to the amount that has to be paid for the said loss or damages. Both parties will pay their consultation fees and half of the cost of the decision (including fees for arbitrators). An indispensible condition to the value of this policy and an essential part of the contract between the company and the holder, is that unless the company suspecting fraud, or all conditions not being *not* fullfilled, or in case of loss of benefits in the above mentioned houses, claims not to be responsible, the holder or the person making the reclamation will not have right to start a suit or begin any proceedings in the courts of justice in virtue of this policy, until the amount of the loss or damages has been consulted and determined, and then the amount fixed in virtue of the decision must be a condition to start any judicial action and will also be taken into consideration by the company for the obligation that it has to pay the reclamations that could take place in virtue of this policy. If the holder does not make any reclamations within three months after the fire, he will then lose all rights that may correspond — him according to this policy.

15. If on account of the above mentioned conditions this policy becomes null, all amounts paid for the policy, are lost in favor of the company.

16. The managers cannot be sued, nor can they be made responsible personally for this insurance, and the agents will never be responsible for any investigation made in legal form or of another character which they find necessary to make for the satisfaction of the company and their personal funds or means cannot be judically seized for any lost alleged by the holder.

17. The company is not responsible for damages caused by lightning if those damages are not caused by the burning of the building or the consequences of the lightning.

18. If the company cannot repair or restore the buildings, when so required by the laws for -he regulation of streets and for the building of houses, the company will only be compelled to pay the necessary amount for the reparation of the said buildings, if the said reparation is possible.

19. It is hereby agreed that if the property covered by this polidy had at the time of the fire more value than the insured amount then this company will only pay for loss and damages the proportion between the insured amount and the total value of the property at the time of the fire." * * *

And the plaintiffs further aver that at the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned the said Francisco Martin had an interest in the said property to the amount of said sum by the defendant insured thereon as aforesaid. And the plaintiffs further aver that on or about the twentieth of August 1898 and while the term of said policy had not yet expired and said policy still was in full force and vigor and effect and all its particulars the said property was consumed and destroyed by fire, whereby the said Francisco Martin and thereafter his legal representatives the plaintiffs then and there sustained loss and damage on the said property to the amount of the sum last aforesaid that is to say the sum insured and also consequent-al damages by and through the refusal of the defendant to pay said amount which said loss and damage did not happen by means of an invasion, insurrection, riot or civil commotion, or of any military or usurped power and the plaintiffs further aver that right after the fire and loss the defendant refused to consider the claim and the plaintiffs further aver that there was not at or since the time of the making of the said policy or the continuance of said insurance as aforesaid any other insurance on said property, and that the said building was *was* not at or since that time appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade business or occupation denominated hazardous or extra-hazardous, or included in any special rates except as specially provided for by the said contract of insurance.

Nevertheless, although -he plaintiffs and the said Francisco Martin, deceased, have kept and performed all things in the said

policy mentioned on his part to be kept and performed, the defendant has not even considered the claim of the plaintiffs but has refused to pay anything whatsoever on account of said loss under said policy has not yet paid the plaintiffs, neither the said Francisco Martin, the deceased, aforesaid amount of the loss and damage sustained or any part thereof, but refuses to do so. And the plaintiffs further aver that the said Francisco Martin has since departed his life, to wit on or about the 25th of October 1900, and that the plaintiffs are his only heirs and Ruperto Martin, one of the plaintiffs, the executor of his last will and testament, and this plaintiff brings into court said last will and testament whereby it fully appears that he is the executor of the said last will and testament of the said Francisco Martin, deceased, and has the execution thereof. Wherefore the plaintiff brings this suit for the sum of twenty thousand dollars and their costs.

(Sig.) (C. M. BOERMAN),
Attorney for the Plaintiffs.

11 U. S. OF AMERICA,
District of Porto Rico, } *ss:*

Ruperto Martin one of the plaintiffs in the above entitled action on oath says that he has heard read the foregoing declaration, that all the allegations therein contained are true to his own knowledge, except as to those stated upon information and belief and as to those he believes it to be true.

(Sig.) (RUPERTO MARTIN.)

Sworn to before me this 21st. day of February, 1902.

(Sig.) (RICARDO NADAL),
Clerk U. S. District Court of Porto Rico,

(Sig.) By (A. AGUAYO),
Deputy Clerk.

And afterwards, to wit, on the same day came the plaintiff by his attorney and filed in the clerk's office of the court aforesaid his certain præcipe in the said case, which *siad* præcipe is clothed in words and figures following, to wit:

Præcipe for Summons.

In the United States District Court *fo* Porto Rico.

GUADALUPE VAZQUEZ MARTIN ET AL.
against
THE ROYAL INSURANCE COMPANY.

Action on assumpsit. Damages, twenty thousand dollars.

The clerk will please issue a summo-s in the above named defendant The Royal Insurance Company and returnable on the second Monday in May at the coming May term of this court.

C. M. BOERMAN,
Plaintiffs' Attorney.

12 And thereupon, on the same day there was issued out of the clerk's office of the court aforesaid our certain writ of summons in this case directed to the marshal of this district and against the said defendant, which said summons is clothed in the words and figures following, to wit:

Summons.

In the District Court of the United States for Porto Rico.

GUADALUPE VAZQUEZ, Widow of Francisco Martin; Ruperto Martin, Heir and Executor of the Will of Francisco Martin, and Enca-nacion, Arturo, Ines, Juan, and Francisca Martin, the Latter a Minor, Who Sues by Guadalupe Vazquez, Her Next Friend, Heirs of Francisco Martin, Deceased,

vs.

THE ROYAL INSURANCE COMPANY, a Corporation.

#110. Assumpsit. Damages, $20,000.

UNITED STATES OF AMERICA, *District of Porto Rico*, } ss:

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

13 You are hereby commanded to summon the Royal Insurance Company, a corporation if they can be found in your district, to be and appear before the United States district court for the district of Porto Rico at the court-rooms of said court in the city of Ponce, P. R., on the twelfth day of May 1902, then and — to answer unto Guadelupe Vasquez widow of Francisco Martin, Ruperto Martin heir and executor of the will of Francisco Martin and Encarnacion, Artoro, Ines, Juan and Francisca Martin, the latter a minor who sues by Guadelupe Vasquez her next friend heirs of Francisco Martin, deceased, on an action in assumpsit damages, twenty thousand dollars, and have you then and there this writ.

Failing to so appewr judgment may be entered against the said defendant by default.

Witness, the Honorable Wm. H. Holt, judge of the district court of the United States for Porto Rico, this 21st. day of February A. D. 1902, and of the Independence of the United States of America the 126.

Attest:

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *Deputy*.

And afterwards, to wit on the first day of March of the year aforesaid, came the marshall of said district to whom the said writ was in form aforesaid directed and returned the same into the clerk's office

of the court aforesaid, with his proceedings endorsed thereon clothed in the words and figures following, to wit:

Marshal's Return.

Return on service of writ.

UNITED STATES OF AMERICA:

In the District Court of Porto *Rico.*

14 I hereby certify and return that I served the annexed summons on the therein-named "The Royal Insurance Company" by handing to and leaving a true and correct copy thereof with N. Arsuaga a member of the firm of Sobrinos de Esguiaga and chief agents within my district of said company The Royal Insurance Company, personally at San Juan, P. R. in the said district on the 24th. day of February, A. D. 1902.

E. S. WILSON,
U. S. Marshal,
By J. L. MILLER, *Deputy.*

And afterwards, to wit, on the 17th. day of March, in the year last aforesaid, came one — the plaintiffs in this case by his attorney, and filed in the clerk's office of the court aforesaid his petition for appointment of a guardian *ad litem* which said petition is clothed in the following words and figures, to wit:

In the United States District Court for Porto Rico.

GUADELUPE VASQUEZ ET AL.
against
THE ROYAL INSURANCE CO.

UNITED STATES OF AMERICA,
District of Porto Rico, } ss:

Ruperto Martin on oath says that he is one of the plaintiffs in the above entitled action. That it is an action on assumpsit for money due on an insurance policy. That one of the plaintiffs to wit Francisca Martin, the sister of the affiant, is a minor.

Wherefore he prays that a guardian *ad litem* be named and appointed by the court for said minor.

(Sig.) RUPERTO MARTIN.

Sworn before me this 14th. day of March 1902.
(Sig.) (A. AGUAYO.)

15 And afterwards, to wit, on the same day of the year last aforesaid an entry was made upon the order book of said

court in said cause which said entry is clothed in the words and figures following, to wit:

In the District Court of the United States for Porto Rico.

GUADELUPE VASQUEZ ET AL.
vs.
THE ROYAL INSURANCE COMPANY.

Order.

Upon the affidavit of Roberto Martin, verified on March 14th, 1902, and filed in this court.

It is hereby ordered that said Roberto Martin be and he is hereby appointed guardian *ad litem* for Francisca Martin, a minor.

March 17th, 1902.

(Sig.) (WM. H. HOLT), *Judge.*

And afterwards, to wit, on the 12th, day of May, of the year last aforesaid, an entry was made upon the journal of said court in said cause which said entry is clothed in the words and figures following, to wit:"

Entry.

Now come Dexter and Cornwall and enter their appearance as counsel for the defendant therein.

And afterwards to wit, on the same day of the year last aforesaid came the defendant in this case by its attorn-ys and filed in the clerk's office of the court aforesaid their certain demurrer in this case, which said demurrer is clothed in the words and figures following to wit:

In the District Court of the United States for Porto Rico, Sitting in Ponce.

GUADELUPE VASQUEZ MARTIN ET AL.
vs.
THE ROYAL INSURANCE COMPANY.

Demurrer.

16 Now comes defendant and demurs to the declaration of plaintif- herein filed and says that it is not sufficient in law for the reason that it does not state the cause of action and because upon its face there is an improper misjoinder of parties and because of want of a capacity of plaintiffs to sue in the manner and form alleged.

Wherefore *plaintiff* prays whether it should further plead herein and asks to be dismissed with costs herein expended.

(Sig.) (F. H. DEXTER,)
HORTON AND CORNWALL,
Attorneys for Defendant.

And afterwards to wit, on the same day and the year last aforesaid an entry was made upon the journal of said court in the said cause which said entry is clothed in the following words and figures to wit:

Entry.

Now comes C. M. Boerman Esq. attorney for the plaintiff in the case of Guadelupe Vasquez Martin *et al. vs.* The Royal Insurance Co. and presents a motion to strike certain grounds of the demurrer filed herein, and after hearing arguments on demurrer F. H. Dexter appearing for the defendant the case is submitted on the demurrer.

And afterwards on the 14th, day of May of the year last aforesaid came the plaintiffs herein by their attorneys and filed in court *his* certain joinder and demurer in this case which reads in words and figures following, to wit:

Joinder on Demurrer.

United States District Court of Porto Rico.

GUADELUPE VASQUEZ MARTIN ET AL.
vs.
THE ROYAL INSURANCE COMPANY.

17 And the plaintiff says that said declaration and matters therein set forth are in manner and form sufficient in law for him to have, and ascertain by action that he is ready to verify and prove the same therefore, inasmuch as the defendant has not answered nor denied the same he prays judgment.

(Sig.) C. M. BOERMAN,
Plaintiff's Attorney.

And afterwards, to wit, on the same day and the same year last aforesaid, the following opinion and order was made by the court and entered and filed, which said order as entered in the journal of the court is clothed in the words and figures following, to wit:

Opinion.

This cause is submitted upon a demurrer to the declaration. It is urged that there is a misjoinder of party plaintiffs. If this be apparent upon the face of the declaration it may be reached by demurrer. The action is upon a policy of insurance. Both the executor and the heirs of the insured are joined as plaintiffs.

From the averments of the declaration the loss occurred during the lifetime of the testator.

Under the Civil Code of Porto Rico, section 902, the powers of an executor are limited, and he does not seem to have the right to sue upon claims due the testator, but it expressly provides that the executor's powers are thus limited if the testator has not provided as

to them. In this instance it appears from one clause of the will that all debts due the testator are to be collected and in another clause the executor is given full and ample power to carry out the provisions of the will. If it be true that otherwise he would not have the power to sue for this claim, yet clearly by the will he has the power to do so and the widow and heirs are not proper and necessary parties. It is also urged that assumpsit does not lie
18 upon a policy of insurance under corporate seal; that covenant is the remedy. Undoubtedly this was the well settled rule as to an action upon a specialty. It has been variously modified and the action of assumpsit has grown in importance and use; but an examination of the declaration clearly obviates this objection and it is not well taken. Upon the ground, however, of a misjoinder of parties the demurrer is sustained. Leave is given plaintiff to amend and he thereupon did so.

(Sig.) WM. H. HOLT, *Judge.*

And thereupon to wit, on the same day and year last aforesaid the plaintiff by his attorney filed in court the following.

Amendment of Declaration.

The declaration is hereby amanded as follows, to wit;

In the title of the case strike — all names of plaintiffs, and read as follows: "Ruperto Martin, executor of the will of Francisco Martin against The Royal Insurance Company of Liverpool, a corporation."

In the beginning of the declaration strike out all words on the first six lines from Guadelupe to "Ponce," and insert instead: "Ruperto Martin, executor of the last will of Francisco Martin, deceased, a citizen and resident of Porto Rico."

On the last page, line 16, strike — the words from "and that" to "testament," on line 18, and insert instead "and that the plaintiff is the executor of his last will and testament."

(Sig.) (C. M. BOERMAN,)
Attorney for Plaintiffs.

U. S. OF AMERICA,
District of Porto Rico.

C. M. Boerman being duly sworn says upon information and belief that the foregoing amendment is true in fact and substance.

(Sig.) (C. M. BOERMAN.)

Sworn before me this 14th, day of May 1902.

(Sig.) A. AGUAYO, *D. C.*

19 And afterwards to wit, on the 15th, day of May of the same year last aforesaid an entry was made upon the journal of said court in said cause which said entry is clothed in words and figures following, to wit:

Entry.

Set for May 17th, 1902.

And afterwards to wit, on the 15th, day of May of the year last aforesaid came the defendant in this case by his attorney and filed in the clerk's office of the court aforesaid his certain plea in this case which said plea is clothed in words and figures following, to wit:

Plea.

Now comes the defendant, The Royal Insurance Company above named, by its attorneys, F. H. Dexter, and Horton and Cornwall, and for plea to the declaration of *of* plaintiff says that it never promised in manner and form as in the said declaration alleged, and of this it puts itself upon the country.

2. For a second and further plea defendant says that plaintiff ought not to have his aforesaid action for the reazon that plaintiff and the said Francisco Martin released and discharged defendant of all liability by reason of all matters and things alleged in said declaration, and this defendant is ready to verify.

3. For a third and further plea to the declaration of plaintiff, defendant says that he should not have and maintain his said action because after the risk set forth in said declaration has been undertaken the stock and merchandise insured was removed from the building or place in which it was described in the policy of insurance as being described and contained, without the consent or sanction of defendant signified by endorsement on said policy.

4. For a fourth and further plea defendant says that plaintiff ought not to have his said action because the alleged loss or damage was caused by fire happening during the existence of an invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military and usurped power, and martial law, within Porto Rico and in the locality in which the property alleged to have been insured was situated, and that no proff was made to the satisfaction of thr directors that such loss or damage as alleged was not occasioned by or connected with, but occurred from a cause or causes independent of the existence of such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law.

5. For a fifth and further plea defendant says that plaintiff ought not have or recover said action for the reason that within the period of fifteen days there was not delivered to defendant by plaintiff or the said Francisco Martin, or any one for him, a particular account as reasonably practicable of the several articles or matters alleged to have been damaged or destroyed by fire and also of all other articles or matters alleged to have been insured by the said policy, the estimated value of each of them respectively, having regard to their several values at the time of the fire; nor did the said Francisco Martin,

nor any one for him, nor plaintiff, give in support thereof all such vouchers, proofs and explanations and other evidence as required by the defendant, together with the statutory declaration of the truth of the account.

6. For a sixth and further plea, defendant says that plaintiff ought not to have or recover herein for the reason that the house insured passed by mortgage and transfere to another person, otherwise then by will or operation of law, without notice thereof being given to defendant.

7. For a seventh and further plea defendant says that plaintiff ought not to have or recover herein for the reason that plaintiff has no interest in or right to recover because of the transfer and mortgage of said premises, and the foreclosure thereof.

21 Defendant says that all of the said matters and facts set forth in the pleas 3, 4, 5 and 6 are material conditions in the said policies of insurance by reason thereof plaintiff cannot recover, and as to the said 3rd., 4th, 5th, 6th, and 7th, pleas defendant says that he is ready to verify.

(Sig.) (F. H. DEXTER,)
HUNTER & CORNWALL,
Attorneys for Defendant.

Otto Wantzelin., being duly sworn, upon oath says that the matters and things stated in the foregoing pleas are true in point of fact. This affidavit is made by him as agent of defendant company.

(Sig.) (FELICI & CO.,)
By order OTTO WANTZELIN.

Subscribed and sworn to before me this 15th, day of May, 1902.

(Sig.) RICARDO NADAL, *Clerk*,
By H. H. SCOVILLE, *D. C.*

And afterwards to wit, on the 17th, day of May of the year last aforesaid, came the defendant by his attorney and filed in the clerk's office of -he court aforesaid his certain replication, which is clothed in the words and figures following: to wit:

Replication.

And the plaintiff as to the plea of the defendant first by him above pleaded, and thereof he has put himself upon the country, does the like.

And as to the second plea of the defendant the plaintiff says that by reason of anything in that plea alleged he ought not to be barred from having his aforesaid action because he says that he has never released and discharged the defendant as therein alleged, and because that -he supposed writing of release is not his deed, and he further says upon information and belief that Francisco Martin, deceased, has never released and discharged the defendant as therein

alleged, and that the supposed writing of relief is not the deed of said Francisco Martin, which he is ready to verify.

22 And as to the third, fourth, sixth and seventh pleas of the defendant above pleaded and whereof he puts himself upon the country, the plaintiff does the like.

And as to the fifth plea of the defendant above pleaded the plaintiff says that he ought not to be barred from bringing his suit by reason of anything therein alleged because he says that the defendant after due notice of the destruction of the premises insured by said policy by the fire has absolutely and under any and all circumstances refused to pay any of the amount insured or any part thereof on the ground as the defendant alleged that the fire occurred by reason of the invasion and revolution, and therefore the plaintiff was not bound to produce any of the particular accounts in the said plea mentioned and the defendant has never asked for such particular account, and to this he is ready to verify.

(Sig.) C. M. BOERMAN,
Plaintiff's Attorney.

Personally came Ruperto Martin who being duly sworn, upon oath says that the statement of facts contained in the above and foregoing replication are true.

(Sig.) RUPERTO MARTIN.

Sworn to and subscribed before me this 17th, day of May 1902.

(Sig.) A. AGUAYO, *D. C.*

23 And afterwards, to wit, on the same day and the same year last aforesaid, came the defendant in this case by its attorney and filed in the clerk's office in the court aforesaid his certain motion to strike out part of replication which said motion is clothe- in the words and figures following, to wit:

Motion to Strike Out Parts of Replication.

Now comes defendant by leave of the court and moves the court to strike out of the second paragraph of plaintiff's replication all that part after the words "as therein alleged" for the reason *for the reason* that such part of said paragraph and replication is not responsive, is surplusage and is not material or relevant to the plea to which it purports to reply.

And defendant moves to strike out all of paragraph four, which purports to be a reply to the fifth plea of defendant for the reason that said attempted replication is argumentative, is not a good matter of reply, and is not responsive or proper matter of replication.

(Sig.) DEXTER, HORTON, CORNWALL,
Attorneys for Royal Insurance Company.

And thereupon, to wit, on the same day and the same year last aforesaid an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures, to wit:

Entry.

Now upon motion of the defendant the court orders that so much of the second paragraph of the replication as referrs to a release in writing and no more should be stricken out.

The motion to strike out paragraph four of the replication is overruled.

By consent of counsel in open court issue is joined on this case on replication.

24 And afterwards to wit, on the same day and the year last aforesaid, an entry was made upon the said journal of said court which entry is clothed in words and figures following, to wit:

Entry.

This cause coming on regularly for trial both sides answer ready. Thereupon the marshal is directed to summon from among the bystanders six good sober upright men to appear nine-thirty a. m. May 19th, 1902, to serve as jurors in this case.

And afterwards to wit, on the 19th day of May of the year last aforesaid, an entry was made upon the journal of said court, in said cause which said entry is clothed in words and figures following, to wit:

Entry.

Resumed.

Now comes the United States marshal in pursuance of an order heretofore entered herein and places in the jury box the following names of persons vis: W. S. Lee, C. Channel, T. E. Lee, Carlos Cabrera, E. A. Homouth and W. T. Bennet who duly qualified as jurors.

The jury as elected and sworn to try the case was composed of the following named persons to wit: W. H. Evans, F. Z. Basora, Rafeal Santoni, George Higgs, Artoro Salas, Santiago Oppenheimer, M. Monsanto, W. S. Lee, C. Channel, T. E. Lee, Carlos Cabrera, E. A. Homouth who hears all the evidence in the case and argument of counsel for the plaintiff.

And afterwards to wit, on the 20th, day of May of the year last aforesaid an entry was made upon the journal of said court in said cause which said entry is clothed in the words and figures following, to wit:

Entry.

Resumed.
The jury hears argument of counsel for defendant, charge of court and retires.

And afterwards to wit, on the same day and the same year last aforesaid, an entry was made upon the journal of said court, in said cause which entry is clothed in the words and figures following, to wit:

25 *Entry.*

Now comes the jury herein and returns into court the following verdict to wit:

"We the jury find for the plaintiff in damages the sum of seven thousand six hundred and twenty-three dollars ($7623).
FRANCISCO B. BASORA, *Foreman.*

And afterwards to wit, on the same day and the same year last aforesaid, an entry was made upon the journal of said court which said entry is clothed in words and figures followin-, to wit:

Entry.

Upon application of the defendant herein the bond for the purposes of writ — error is fixed at *tewlve* thousand dollars.

And afterwards to wit, on the 21st, day of May of the year last aforesaid, an entry was made on the journal of said court in said cause which said entry is clothed in words and figures following, to wit:

Entry.

This cause having come to trial on May 20th, 1902, and the jury having rendered the verdict in frvor of the plaintiff and against the defendant for the sum of $7623 in damages.
It is now adjudged by the court that the plaintiff in the above entitled cause to wit, Ruperto Martin, executor of the will of Francisco Martin, recover of the defendant, The Royal Insurancr Company of Liverpool the sum of seven thousand six hundred and twenty-three dollars, with interest at twelve per cent. per annum, until paid and his costs herein to be taxed by the clerk of this court and for which plaintiff may have execution.

And afterwards to wit, on the 22nd, of May of the year -ast aforesaid came the plaintiff by its attorney and filed in the clerk's office of the court aforesaid, his certain motion for a new trial, which motion is clothed in words and figures following, to wit:

Motion for New Trial.

Now comes the defendant and moves the court to set aside the verdict rendered and to grant a new trial of this cause. And
26 for grounds for this motion defendant shows to the court the following to wit:

The court refused to admit competent and material evidence offered by the defendant as to the execution and making of a release by Francisco Martin and plaintiff for the alleged loss which occur-ed under the policy of insurance issued by defendant.

2.

Also because the court refused to admit material and competent evidence offered by defendant as to the existence of an invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military and usurped power and martial law, within Porto Rico, and limiting the evidence over the objection of defendant to an actual invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military and usurped power and martial law within the immediate locality where the property was situated.

(3.)

Because the court refused to admit competent and material evidence offered by defendant to show the commotion by a court-martial of the United States officers of several persons accused of riot, insurrection and incendiarism on the night of the 19th. of A-gust, 1898, in the place where the property was situated and at the time of the burning of the same, said court-martial having been conducted September 8th. 1898.

(4.)

Because the court refused to admit the evidence of witnesses living in the place where the property was situated and within a half hour's drive therefrom as to the general conditions within their common knowledge showing the existence of an invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military and usurped power a*b*d martial law within Porto Rico at the time of said loss, and because the court held that such testimon- was not competent, and excluded the same unless it could be shown by defendant that such witnesses of acts of riot, insurrection, civil commotion, military and usurped power or martial law at the time and immediate place where such loss occur-ed.

27 5.

Because the court admitted on the trial incompetent and immaterial evedence of plaintiff as to payment of premium to defendant prior to the year 1898.

6.

Because of the giving to the jury the portions of the charge excepted to by the defendant and in not sustaining such exceptions.

7.

Because the court refused to direct the jury upon the request of defendant after they had returned a verdict in a lump sum and before they had been pooled to retire and return a separate verdict showing the amount found by them separately upon the building and upon the stock of goods, merchandise, and provisions, as provided by the policy.

8.

Because the court refused to give certain charges to the jury at the request of defendant as appears by -he record herein *and* were material and proper.

9.

Because the verdict is contrary to the law and evidence in the case.

(Sig.) F. H. DEXTER,
HORTON & CORNWALL,
Attorneys.

And afterwards to wit, on the same day and year last aforesaid, came the defendant herein by its attorneys and filed in the clerk's office of the said court his certain motion in arrest of judgment, in said cause which motion is clothed in the words and figures following, to wit:

Motion in Arrest of Judgment.

Now comes the defendant and moves the court to arrest the judgment herein for the reasons:

28 1.

Because the declaration herein does not set forth a cause of action against this defendant.

2.

Because plaintiff has no right to sue and recover for the alleged cause of action.

3.

Because the court erred in over-ruling the demurrer of defendant upon ground that the declaration did not state a cause of action, and because the action herein was improperly brought in assumpsit, whereas as covenant was the proper form of action, it appearing form the declaration that the policy sued for was under seal.

4.

Because a verdict should have been directed by the court for defendant at the close of the case.

5.

Because of the giving to the jury that part of thr charge or portions thereof excepted to by defendant and in refusing the charges and the modifidation of the court's charge as requested by defendant.

6.

Because the verdict is irregular and not in accordance with the evidence in the case.

(Sig.) F. H. DEXTER & HORTON & CORNWALL.

And afterward, to wit, on the 24th, day of May of the same year last aforesaid an entry was made upon the journal of the said court in the said cause which said entry is clothed in words and figures following, to wit:

Now comes the defendant herein by its attorney F. H. Dexter Esq. and calls up his motions heretofore filed for a new trial and in arrest of judgment, both of which motions are over-ruled, and the defendant is given until June 20th, to file bill of exceptions.

29 And afterwards, to wir, on the 12th day of June, 1902, there was filed in the clerk's office of said court in said cause a certain petition for writ of error, which said petition is as follows, to wit:

30 In the District Court of the United States for Porto Rico, Sitting at Ponce.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased, *v.* THE ROYAL INSURANCE COMPANY. } Petition for Writ of Error and Supersedeas.

The defendant above named, The Royal Insurance Company, feeling itself aggrieved by the verdict of the jury and the judgment entered in this cause against it on the twenty-first day of May, in the year of our Lord one thousand nine hundred and two, at the May term of this court, in the city of Ponce, Porto Rico, comes now by F. H. Dexter and Horton & Cornwell, its attorneys, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States, under and according to the laws of the United States, in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all fur-

ther proceedings in this court be suspended and stayed until
31 the determination of said writ of error by the said Supreme Court of the United States, and your petitioner will ever pray.

F. H. DEXTER AND
HORTON & CORNWELL,
Attorneys for Defendant.

And afterwards, to wit, on the same day last aforesaid there was filed in the clerk's office of said court in said cause a certain assignment of errors which said assignment of errors is as follows, to wit:

32 In the District Court of the United States for Porto Rico, Sitting at Ponce.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased,
v.
THE ROYAL INSURANCE COMPANY.
} Assignments of Error.

Comes now The Royal Insurance Company, plaintiff in error, by its counsel, and respectfully represents that it feels itself to be aggrieved by the proceedings and judgment of the district court of the United States for Porto Rico in the above entitled cause, and assigns error thereto as follows:

First. That the district court of the United States for Porto Rico erred in not sustaining the demurrer of plaintiff in error, because of the failure of said declaration to state a cause of action, and because of the improper bringing of this action in assumpsit
33 instead of covenant, it appearing upon the face of the said declaration that the insurance policy sued on was under seal.

Second. The said district court of the United States for Porto Rico erred in allowing defendont in error to prosecute this suit as executor of Francisco Martin, deceased, after overruling the demurrer to said declaration, as stated in assignment number one.

Third. The said district court of the United States for Porto Rico erred in refusing to grant the motion of plaintiff in error to strike out paragraph four of the replication of defendant in error, because that part of the said replication was not good matter of reply, was argumentative and not responsive or proper to the plea to which it purported to reply.

Fourth. The said district court of the United States for Porto Rico erred in sustaining the objection of defendant in error as to the receipts offered in evidence by plaintiff in error, signed by Francisco Martin, as showing a release by him, and excluding the same from the jury as evidence of such release.

Fifth. The said district court of the United States for Porto Rico erred in refusing to allow witnesses of plaintiff in error, Pedro Juan Rossaly and Enrique Fritze, to testify as to the existence of an

invasion, foreign enemy, rebellion, insurrection and riot, civil
34 commotion, military and usurped power or martial law within Porto Rico and in the locality in which the property alleged to have been insured was situated, and because the court, by its ruling and directions, limited the testimony of such witnesses, as well as of the witnesses José Hilario Roche, Maria Balbina and Manuel Peña, under the fourth plea of defendant, to testimony of the actual existence of an invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military and usurped power or martial law within the immediate locality where the property insured was situated, and at the precise time of the loss thereof by fire.

Sixth. The said district court of the United States for Porto Rico erred in refusing, upon the objection of defendant in error, to admit the record of the court martial of United States officers, showing the conviction, September 8, 1898, by said marshal, at a session held in the city of Ponce, Porto Rico, and within a short distance of the location of the said property, of several persons accused of riot, insurrection, and incendiarism, committed by them on the night of the nineteenth of August, 1898, in Juana Diaz, being the same time and place when the property insured was destroyed by fire.

Seventh. The said district court of the United States for Porto Rico erred in excluding the testimony offered by the said witnesses
35 above named, who lived in the said locality of the fire, and within a short distance therefrom, as to their common knowledge showing the existence of an invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military and usurped power or martial law within the island of Porto Rico generally, and in the vicinity of the said town of Juana Diaz at the time of said fire, and because the court held that such testimony was not competent, and excluded the same, unless it could be shown by plaintiff in error that such witnesses were actual spectators of such acts of riot, invasion, insurrection, civil commotion, military and usurped power or martial law at the immediate time and place where and when such fire occurred.

Eighth. The said district court of the United States for Porto Rico erred in allowing the case to go to the jury, and entering up a judgment upon the verdict of the latter, because of the failure of testimony to show that proofs had been furnished, as set forth in the fifth plea of plaintiff in error, or that the company had legally waived the same, and because there was no testimony or evidence to justify the finding or judgment in favor of defendant in error, because the evidence failed to establish any right or interest of defendant in error in and to said loss, or the right of action to recover the same, it having been established by the evidence of defendant in error that Francisco Martin, to whom the policy had been
36 originally issued, had surrendered the property insured to a firm or society of which he was only a sleeping or silent partner.

Ninth. The said district court of the United States for Porto Rico erred in refusing to direct the jury, upon request of plaintiff in error,

after they had returned a verdict in a lump sum, and before the jurors had been polled, to retire and return a separate verdict, showing the amount found by them separately upon the building and upon the stock of goods, merchandise and provisions, as provided by the policy for insurance sued on.

Tenth. The said district court of the United States for Porto Rico erred in charging the jury, over the exceptions of plaintiff in error, that if they found for the plaintiff below, they might find for an amount "not to exceed the amount of twenty thousand dollars, and "not to exceed the amount of insurance on the property." And the court also erred in coupling with such charge the language:

"You are limited to the actual loss that occurred, and also limited to the actual insurance on the property, not exceeding in any event twenty thousand dollars,"

which action of the court was duly excepted to.

Eleventh. The said district court of the United States for Porto Rico erred in refusing the request of plaintiff in error for the positive charge

37 "that there could be under no circumstances a verdict for more than the face value of this policy, which is sixteen hundred pounds,"

which ruling of the court was then and there excepted to.

Twelfth. The said district court of the United States for Porto Rico erred in that part of the charge as follows:

"Now a resident general agent of a foreign insurance company, with the general charge of its business, and the right to manage its business generally in the district where he resides, has the power in law to waive the conditions in the policy as to notice of the loss, or as to presentation of proofs of the loss. He may waive it by contract as to the payment of what he thinks should be paid on account of that loss, that is, a waiver of any production of proof as to the loss, or of any notice, and if the general agent has that power and acts upon it, oral notice from the party that the loss has occurred, in such a way as to induce that insured party to believe reasonably that no other notice is required of the loss, and that no other proofs are required, then that, in law, is a waiver of that notice or of proofs. As a matter of law, when that general agent was applied to and told of this loss, and was informed that it was a total loss, if you believe from the testimony that he informed the insured that he would report it to the company, and would notify him if they determined to pay, and no further notice was required by him, or any proofs of loss were required by him, except being informed that it was a total loss of the property, that, in law, was a waiver of the production by the insured to the general agent of the company of proof to the amount of that loss. If you believe from the testimony that the company, by their general agent, induced the insured,—reasonably induced him, that is, that the talk was such that a man of ordinary intelligence could reasonably infer from it,—that no other proofs or

notice were required, then it was a waiver of any other proofs or notice. If, for instance, the company being notified orally of the destruction of the property, if they refuse to pay any loss upon
38 a totally different ground than that of no proofs of loss being presented to them, then that was a waiver, in law, of any proofs of loss being presented."

Plaintiff in error assigns such portion of the charge as error, because, first, of the statement of law as to the authority of the general agent to waive the conditions as to loss or presentation of proofs, and, second, because it eliminated the question of whether such waiver was before or within the time within which the insured was, by the terms of the policy, required to furnish proofs of the loss as required by the terms and provisions of the policy. Such portion of the charge was at the time excepted to.

Thirteenth. The said district court of the United States for Porto Rico erred in refusing to grant the charge asked by plaintiff in error, as follows:

"The *the* condition would be binding as furnishing proofs of loss within fifteen days, and would preclude the plaintiff from recovery if the proofs of loss were not furnished within that time,"

which ruling of the court plaintiff in error then and there excepted to.

Fourteenth. The said district court of the United States for Porto Rico erred in charging the jury, over the exceptions of plaintiff in error, as follows:

"The defense mainly relied upon here is that this loss occurred during an invasion, riot, civil commotion, military or usurped power, or martial law. A fair construction of that condition of the
39 policy, in the opinion of the court, is that that must, in order to excuse this company from liability in case of loss of property by fire, that invasion by a foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, must have been occurring in the section of the country where this loss occurred, or within the locality, and within such a radius of country where that loss occurred, that danger arose to property by reason of the existence of that rebellion, invasion, insurrection, civil commotion, and military or usurped power or martial law. And I further tell you, gentlemen, that if you believe from the evidence that this destruction of this property did not occur from any of these causes, and occurred from a cause independent of the existence of any foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, that then you should find for the plaintiff in damages whatever you think may have been his loss, provided you believe the insurance existed on the property. This is a reasonable construction of the law, as the court thinks, of this and these conditions of the policy."

Plaintiff in error assigns this charge of the court as error, because it varied the terms and contract contained in the policy of insurance sued upon and offered in evidence, and which had been accepted by the insured, and that the effect of such ruling was to narrow the

application of the language of such policy and to limit the defence of plaintiff in error thereunder to proof that the loss was a direct result of one of those enumerated conditions or causes.

Fifteenth. The said district court of the United States for Porto Rico erred in refusing the request of plaintiff in error for a charge as follows:

40 "If you believe that the loss occurred during the existence of invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, then you will find for the defendant,"

to which ruling plaintiff in error then and there excepted.

Sixteenth. The said district court of the United States for Porto Rico erred in its ruling upon the said request of plaintiff in error, in the following language:

"I understand you are claiming, for instance, if the Germans invaded San Juan and got into San Juan, and if this property and this place had been destroyed by a boy dropping a match, that the company would be released. The court has not that view."

Seventeenth. The said district court of the United States for Porto Rico erred in refusing to charge the jusy as requested by plaintiff in error,

"that if the jury believes from the evidence that if at the time of the fire, or prior thereto, the title to the stock of goods which had been insured had passed out of Francisco Martin and into another person, or other persons, the plaintiff herein could not recover,"

to which action of the court the plaintiff in error then and there excepted. Plaintiff in error assigns this ruling as error, because of the testimony of plaintiff, Ruperto Martin, that the stock of goods recovered by the insurance, was owned and controlled at the time of the fire by the society or firm of Martin Brothers, of which the insured, Francisco Martin, was, at the time of said loss, only a sleeping or silent partner.

41 *Eighteenth.* The said district court of the United States for Porto Rico erred in entering up judgment in favor of said Ruperto Martin, executor, upon the verdict as rendered by the jury, because the said judgment is contrary to law, and the verdict of the jury contrary to the law and to the evidence.

Nineteenth. The said district court of the United States for Porto Rico erred in not sustaining the motion of plaintiff in error in arrest of judgment.

Wherefore, the said Royal Insurance Company prays the honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the said district court of the United States for Porto Rico, entered in the above entitled cause.

F. H. DEXTER AND
HORTON & CORNWELL,
As Attorneys.

(Indorsement:) Ruperto Martin, executor, *vs.* Royal Insurance Co. Assignment of errors. Filed — clerk's office, United States district court. June 12, 1902. Ricardo Nadal, clerk by H. H. Scoville, deputy.

And afterwards, to wit, on the same day last aforesaid an entry was made on the order book of said court, which said order is as follows, to wit:

42 In the District Court of the United States for Porto Rico, Sitting at Ponce.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased,
v.
THE ROYAL INSURANCE COMPANY.
} Order Allowing Writ of Error.

On this the 12th day of June, 1902, in the city of San Juan, in the above entitled cause, upon motion of F. H. Dexter and Horton & Cornwell, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that the writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of bond on said writ of error be and hereby is fixed at twelve thousand dollars, and the said bond when approved shall operate as a supersedeas.

WM. H. HOLT, *Judge.*

43 And afterwards, to wit, on the same day last aforesaid there was issued out of said court a certain writ of error which said writ of error is as follows, to wit:

In the District Court of the United States for Porto Rico, Sitting at Ponce.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased,
v.
THE ROYAL INSURANCE COMPANY.
} Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable William H. Holt, judge of the district court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court of the United States for Porto Rico before you, between Ruperto Martin, as executor of the will of Francisco Martin, deceased, defendant in error, and The Royal Insurance Company, plaintiff in error, a mani-

fest error hath happened to the great damage of the said
44 Royal Insurance Company as by its complaint appears.

We believing that error, if any hath been, should be duly corrected, and full and speedy justice done to parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and the proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, before the first day of the next term of this the Supreme Court of the United States next ensuing after the issue of this writ, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 12th day of June in the year of our Lord one thousand nine hundred and two.

Allowed to operate as a supersedeas upon giving bond as provided.

WM. H. HOLT,
Judge of the District Court of the United States for Porto Rico.

This 12th day of June, 1902.

[SEAL.] RICARDO NADAL,
Clerk of the District Court of the United States for Porto Rico, and the Seal of said Court,
By H. H. SCOVILLE, *Deputy.*

45 (Indorsed:) Filed June 12th, 1902.

And afterwards, to wit, on the same day last aforesaid there was issued out of said court a certain citation which said citation is as follows, to wit:

In the District Court of the United States for Porto Rico, Sitting at Ponce.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased,
v.
THE ROYAL INSURANCE COMPANY. } Citation.

UNITED STATES OF AMERICA, *ss:*

To Ruperto Martin executor of the will of Francisco Martin, deceased, and Charles M. Boerman, his attorney of record, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for Porto Rico

at Ponce, in the above entitled cause, wherein The Royal Insurance Company in plaintiff in error and you are defendant in error,
46 to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand nine hundred and two.

WM. H. HOLT,
Judge of the District Court of the United States for Porto Rico.

Attest: RICARDO NADAL,
Clerk of said Court,
[SEAL.] By H. H. SCOVILLE, *Deputy.*

UNITED STATES OF AMERICA, *Island of Porto Rico,* } *ss:*

I hereby certify that I served the within citation on Charles M. Boerman, attorney of record of Ruperto Martin, executor of the will of Francisco Martin, deceased, on the 12 day of June, 1902, at the city of San Juan, Porto Rico, by then and there delivering to
47 the said Charles M. Boerman, attorney of record, personally, a true copy of the within citation.

Dated San Juan, Porto Rico, this 12 day of June, 1902.

E. S. WILSON,
United States Marshal,
By H. S. HUBBARD, *Deputy.*

(Indorsement:) Ruperto Martin, executor, *vs.* Royal Insurance Co. Citation. Filed — clerk's office, United States district court. June 12, 1902, Ricardo Nadal, clerk by H. H. Scoville, D. C.

48 And afterwards, to wit, on the 13th day of June A. D., 1902, there was filed in the clerk's office of said court in said case a certain bond which said bond is as follows, to wit:

In the District Court of the United States for Porto Rico, Sitting at Ponce.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased,
v.
THE ROYAL INSURANCE COMPANY.
} Bond on Writ of Error.

Know all men by these presents: That we, the Royal Insurance Company, a corporation organized under the laws of Great Britain, as principal, and The Fidelity & Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, as

surety, are held and firmly bound unto Ruperto Martin, executor of the will of Francisco Martin, deceased, plaintiff above named, in the sum of twelve thousand dollars, to be paid to the said Ruperto Martin, executor, or to the estate of the said Francisco Martin, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our successors, representatives and assigns, firmly by these presents.

49 Sealed with our seals this thirteenth day of June, 1902.

Whereas, the above named defendant, The Royal Insurance Company, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the district court of the United States for Porto Rico;

Now therefore, the condition of this obligation is such that if the above named defendant, The Royal Insurance Company, shall prosecute said writ to effect and answer all costs and damages if it shall fail to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

(Signed) ROYAL INSURANCE CO.,
By SOBRINAS DE ASQUIAGA,
General Agents.
THE FIDELITY AND DEPOSIT CO. OF MD.
E. L. ARNOLD, *Att'y & Agent.*

Approved this thirteenth day of June, 1902, for the purposes of the supersedeas.

WM. H. HOLT, *Judge.*

(Indorsement:) In the district court of the United States for Porto Rico. Ruperto Martin, executor. *vs.* Royal Insurance Co. Filed — clerk's office, United States district court, June 13th. 1902 Ricardo Nadal, clerk of the court by H. H. Scoville deputy.

50 And afterwards, to wit, on the 20th day of June, A. D., 1902 there was filed in the clerk's office of said court a certain bill of exceptions in said cause which said bill of exceptions is as follows, to wit:

In the District Court of the United States for Porto Rico.

RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased,
vs.
THE ROYAL FIRE INSURANCE COMPANY.
} Bill of Exceptions.

Be it remembered that at a term of the district court of the United States for Porto Rico held in the city of Ponce on the 19th day of May, A. D. 1902, a cause therein pending wherein Ruperto Martin, executor of the last will of Francisco Martin, deceased, was plaintiff and The Royal Insurance Company was defendant, came on to be

heard before the Honorable William H. Holt, judge of the said court, at which time came the said parties by their respective attorneys, and thereupon the said issues in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid whereof mention is within made, being called likewise, came and were sworn to try said issues upon the merits of said cause in the manner aforesaid joined.

And thereupon the plaintiff, to maintain the issues on his part, appeared as a witness in said cause, and having been first duly sworn, testified as follows:

(By Mr. BOERMAN, att'y for pl'ff:)

Q. What is your name?
Ans. Ruperto Martin Vasquez.
Q. Where do you live?
Ans. Now in Santa Ysabel.
Q. How old are you?
Ans. Thirty years.
Q. What is your business?
Ans. Commission merchant.
Q. What relation have you been to Francisco Martin?
Ans. Son.
Q. Is he alive or dead?
Ans. He is dead.
Q. Has he made a will?
Ans. Yes.
Q. Please take a look at this and say what it is?

Mr. DEXTER (att'y for def't): I object to the witness stating what this paper is. The paper will speak for itself if offered in evi-
dence.
51 Mr. BOERMAN: This is the first notarial copy of the will of which the witness is the executor.

Mr. DEXTER: We object as from the certificate of the translation it does not appear to be a good translation.

The COURT (to witness): Are you executor of the last will of your father?

Ans. Yes.

The COURT: I do not think that it is a good translation of the original. It does not appear so. I will order that the translation be made later, and will admit it in evidence.

Q. To your knowledge did your father own in his lifetime any building in the barrio of the "Coto"?
Ans. Yes.
Q. Where is the Barrio "Coto"—near what place?
Ans. It is on the military road, five kilometers from Ponce.
Q. What was kept in that building by your father?
Ans. It was a house of commerce and a dwelling-house.

Q. What was in that house of commerce—what kind of commerce?

The COURT: When?

Q. In the year 1898 did your father have that building—was he the owner of it?

Ans. Yes.

Q. What was kept in that building?

Ans. Provisions and merchandise.

Q. What interest did your father have in this goods and stock?

Ans. He was a silent partner.

Q. Do you know if there was any insurance on that building, or that stock?

Ans. Yes.

Q. Where is that policy of insurance?

Ans. On the night of the fire it was lost.

Q. Was there a search made for it; did they look for it?

Ans. Yes.

Q. Was it found?

Ans. No.

Mr. BOERMAN: I gave notice to the defendant to produce a copy of that policy and they have produced it, and I now offer it in evidence.

The COURT: Read it.

And thereupon the plaintiff to further maintain the issues on his part offered and introduced in evidence a certain document entitled a copy of the policy issued by the defendant to the insured, Francisco Martin, on the — day of ——, 18—, and which is in words and figures as follows, to wit:

52

Board of directors.
B. Brocklebank, Esq., Ch.
G. H. Horsfall, Esq., D. C.
Michael Belcher, Esq.
Josias Brooks, Esq.

Royal Fire and Life Insurance Company.

Porto Rico,
A. McCormick, Esq.,
Agent.

Policy number: 1720984. Sum insured: £1600

Premium: 12th M'ch '77 to 12th M'ch '78 per ann. £42.

Rate: 52/6 (Rate reduced to 50/- in 1883) Renewal to 12 M'ch '99.

Wm. Cliff, Esq.
David Duncan, Esq.
T. D. Hornby, Esq.
D. Malcomson, Esq.
Wm. J. Morrow, Esq.
M. Hyslop Maxwell, Esq.
Henry Royds, Esq.
John Torr, Esq., M. P.
Manager,
Jno. H. McLaren, Esq.

This policy of insurance witnesseth, that Francisco Martin, of Ponce, P. R., hereinafter called the insured, having paid to the undersigned, as authorized agent of the Royal Insurance Company

(hereinafter called the company) the sum of — for insuring against loss or damage by fire, as hereinafter mentioned, the property hereinafter described in the sum or several sums following, viz:

£700 (seven hundred pounds)

On the building, timber built and roofed with galvanized iron situated in the Barrio del Coto district of Ponce, P. R., occupied part as a dwelling and partly as a shop.

£900 (nine hundred pounds)

On stock in trade in said building consisting of provisions and groceries.

Each item of this policy is separately subject to the conditions of average printed on the back hereof.

The company hereby agree with the insured (but subject to the conditions on the back hereof, which are to be taken as part of this policy) that if the property above described, or any part thereof, shall be destroyed or damaged by fire, at any time between the — day of —— 187–, and four o'clock in the afternoon of the — day of —— 187–, the company will, out of their capital, stock and funds, pay or make good to the insured the value of the property so destroyed, or the amount of such damage thereto, to an amount not exceeding in respect of each or any of the several matters above specified, the sum set opposite thereto respectively, and not exceeding in the whole the sum of —. And also not exceeding, in any case, the amount of the insurable interest therein of the insured at the time of the happening of such fire.

In witness whereof, we, two of the directors of the said company, by our authorized agent, have hereunto set our hands, and have caused the common seal of the said company to be hereunto fixed.

Dated at Porto Rico this — day of —— in the year of our Lord one thousand eight hundred and seventy-- and issued there.

Examined.

Entered.

(Circle for Seal.)

_____,

_____,

Directors,

By their attorney, —— ——,

Agent of the Company.

You are requested to examine the conditions of this policy and to observe that no policy is valid unless it bears the company's seal and has received the signatures of two directors by their attorney or attorneys.

53 The conditions referred to in this policy are as follows:

1. Any material mis-description of any of the property proposed to be hereby insured, or of any building or place in which property to be so insured is contained, or any omission to state the existence of any hazardous trade or of any apparatus in or by which heat is produced, other than grates and common fire places therein, and any mis-statement of or omission to state any fact material to be

known for estimating the risk whether at the time of effecting the insurance or afterwards, renders this policy void as to the property effected by such mis-description, mis-statement or omission respectively.

2. If after the risk has been undertaken by the company anything whereby the risk is increased be done to, in or upon property hereby insured, or to, upon or in any building or place in which property hereby insured is contained, or if any property hereby insured be removed from the building or place in which is is hereby described as being contained, or if any addition to the risk arise from any other cause whatsoever without in each and every such cases the assent or sanction of the *country* signified by endorsement hereon, or if the insured shall refuse or neglect to pay any further premium which may be demanded in consequence of any increase of risk, the insurance as to the property thereby effected ceases immediately thereupon to attach. And if any reason for such alteration or addition, or from any other cause whatever the company or its agents shall desire to terminate the insurance effected by this policy, it shall be lawful for the company or its agents so to do by notice to the insured, or his representative, and to require this policy to be given up for the purpose of being cancelled, provided if in any such case the company shall refund to the insured a rateable proportion for the unexpired time thereof of the premiums received for the insurance.

3. This policy does not cover property held in trust or on commission unless expressly described as such; no china, glass, looking-glasses, jewels, clocks, watches, trinkets, medals, curiosities, manuscript, prints, paintings, drawings, sculptures, musical, mathematical or philosophical instruments, patents, models, and moulds unless specially mentioned in the policy; nor deeds, bonds, bills of exchange, promissory notes, money, securities for money, stamps and books of account; nor gun-powder; nor loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law within the country or locality in which the property insured is situated, unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with, but occurred from a cause or causes independent of the existence of such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, and this policy does not cover loss or damage occasioned by or through any earthquake or hurricane or through the spontaneous fermentation or heating of the subject insured; nor goods destroyed or damaged while undergoing any process by which the application of fire heat is necessary; nor loss or damage by explosion, except loss or damage to a building or property contained therein caused by explosion of gas in such building, not being a building in which gas is manufactured.

4. No insurance proposed to the company is to be considered in force until the premium be actually paid, nor receipts for any pre-

mium of insurance shall be valid or available for any pur-
54 pose whatever, except such as are printed and issued from the company's office and signed by one of the clerks or agents of the office and impressed with the seal of the company, and any condition or proviso contained in, endorsed upon, or referred to in any such receipt shall be taken as part of this policy.

5. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by due operation of law, unless notice thereof be given to the company, and the subsistence of the insurance in favor of such other person be declared by a memorandum endorsed hereon by, or on behalf of the company.

6. On the happening of any loss or damage by fire to any of the property hereby insured, the insured must forthwith *five* notice in writing thereof to the company, and within fifteen days at latest deliver to the company as particular an account as may be reasonably practicable of the several articles or matters damaged or destroyed by fire, and also of all other articles and matters insured by this policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire and in support thereof give all such vouchers, proofs and examinations and other evidence as may be reasonably required by or on behalf of the company, together with, if required, a statutory declaration of the truth of the account; and in default thereof no claim in respect to such loss or damage shall be payable or sustainable unless or until such notice, account, proofs and explanations or evidence respectively shall have been given and produced as aforesaid, and such statutory declaration, if required, shall have been made.

7. No profit nor advantage of any kind is to be included in any claim of loss or damage under this policy and if the claim be in any respect fraudulent, or if any false statutory declaration be made or used in support thereof, or if the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured all benefit under this policy is forfeited.

8. In case of damage by the removal of property to escape conflagration this company will contribute thereto in proportion the sum insured hereby shall bear to the whole value of such property before removal; but the company shall not be held liable for property stolen.

9. The company may, if they think fit, at their option, re-instate or re-place the property damaged or destroyed instead of paying the amount of the loss or damage, and may join with any other company or insurers in so doing in cases where the propert- is also insured elsewhere.

10. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made under this policy, the company without being deemed wrongdoers may by their authorized officers and servants or others, enter into and for a reasonable time remain in possession of such building or place, property or effects, for all

reasonable purposes relating to or in connection with the insurance hereby effected, and this policy shall be evidence of leave and license and authority for that purpose.

11. The insured must give notice to the company of any insurance or insurance made elsewhere on the property hereby insured, or any part thereof, the particulars of which must be endorsed on the policy, and unless such notice be given and endorsement be made, the insured will not be entitled to any benefit under this policy.

55 12. If at any time of any loss or damage by fire happening to any property hereby insured there be any other subsisting insurance or insurance whether effected by the insured or by any other person covering the same property, this company shall not be liable to pay or contribute in respect of such loss or damage more than its rateable proportion of such loss or damage.

13. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property hereby insured, either exclusively or together with any other property in or subject to the same risk only, shall be subject to average, the insurance on such property under this policy shall be subject to average in like manner.

14. If any difference shall at any time arise between the company and the insured, or any claim under this policy as to the amount of any loss or damage by fire, and no fraud be suspected, every such difference as and when the same arises shall be referred to the arbitration and decision of two indifferent persons, one to be chosen by the party claiming and the other by the company, or in case of disagreement between them then of an umpire to be chosen by the arbitrators before entering on the reference; and the costs of the reference shall be in the discretion of the arbitrators or umpire, as the case may be, who shall award by whom and in what manner the same shall be paid; and the decision of the arbitrators or umpire, as the case may be, shall be final and binding on all parties, and this condition shall be deemed and taken to be an agreement to refer as aforesaid. And it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire, as the case may be, shall be a condition precedent to the liability or obligation of the company to pay or satisfy any claim under this policy for the loss or damage in respect to which any such difference may have arisen and to the enforcement of any such claim.

15. In all cases where this policy is void or ceased to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof shall be forfeited.

16. The directors of the company shall not be sued nor made personally responsible for this insurance until the funds of the company are first exhausted, and the agent shall in no case be responsible, either on account of any legal or other investigation which they may find it necessary to institute for the satisfaction of the company; nor can their personal property be attached on account of any alleged loss by the insured.

17. If in any case the company shall be enabled to re-instate or repair the buildings because of any provisions in the acts in force for regulating the alignment of streets or direction of buildings, the company shall, in every such case, only be liable to pay such sum as would be requisite to re-instate or repair such buildings if the same could lawfully be re-instated to their former condition.

Conditions of Average.

1. It is hereby declared and agreed that whenever a sum insured is declared to be subject to the conditions of average, if the property so covered shall at the breaking out of any fire be collectively of greater value than the sum insured thereon then this company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen.

56 2. But it is at the same time declared and agreed that if any property included in such average shall at the breaking out of any fire be insured by any other policy which whether subject to average or not shall apply to parts only of the buildings or places or of the property to which such average extends, then this policy shall not cover same excepting only as regards any excess of value beyond the amount of such more specific insurance which said excess is declared to be under the protection of this policy, and subject to average as aforesaid.

3. And it is further declared and agreed that if the insured shall claim under this policy for loss or damage to property embraced in the terms of any average policy extending as well to other buildings or places, or to other property not included in the terms of this insurance, and if at the breaking out of any fire there shall not be any property in such other building or places, or any such other property actually at risk be protected by such policy, then so far as regards the settlement of any claim under this policy, the terms and liability thereof shall be held to be concurrent in all respects with those of such other policy.

57 Q. State what kind of goods were contained in that building?

Ans. Provisions and merchandise.

Q. What do you mean by merchandise?

Ans. Clothing and textures.

Q. Nothing more—no other articles?

Ans. Shoes and hats and everything carried in a commercial house.

Q. Did it include any china?

The COURT: Do not lead him.

Q. It did not include anything else?

Ans. It had coffee, tobacco, rice and other articles.

The COURT: Is the last date of the renewal shown on the policy?

Mr. BOERMAN: Yes, the last time of the renewal was to the 12th of March, 1899.

The COURT: It must have been made then on the 12th of March, '98.

Mr. BOERMAN: To prove when it was renewed, I will produce in evidence the receipts from 1897 to 1898.

The COURT: The last renewal was when?

Mr. BOERMAN: From March 12th, 1897, to March 12 1898.

Mr. DEXTER: That being the case they only come down to March 1898. Besides they are in Spanish.

The COURT: I will let you offer those receipts.

Mr. DEXTER: Defendants excepts to the ruling of the court.

And thereupon the plaintiff to further maintain the issued on his part offered and introduced in evidence certain documents, entitled receipts from the defendant for the payment of the amounts required as renewal premiums for the renewal of the aforesaid policy of insurance, which said receipts are in words and figures as follows, to wit:

EXHIBIT C.

58 "The Royal Insurance Company.

Agents for Porto Rico—Messrs. Feddersen & Co.

Receipt No. 728880. 3RD OF MARCH, 1886.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of polic- number 1720984 of this company, amounting to £1600 sterling of sum insured for one year from 12th of March 1886 to 12th of March 1887 at four o'clock in the afternoon. Sum insured £1600 Premium £40.

FEDDERSEN, *Agent.*

"The Royal Insurance Company.

Agents for Porto Rico—Messrs. Fedderson & Co.

Receipt No. 857450. 12TH OF MARCH, 1887.

Received from Mr. Francisco Martin the sum of forty pounds sterling for continuance of policy No. 1720984 of this company amounting to £1600 sterling of sum insured for one year from 12th of March 1887 to 12th of March 1888 at four o'clock in the afternoon. Sum insured £1600. Premium £40.

FEDDERSEN & CO.,
A. SCHNEIDER, *Agents.*

"The Royal Insurance Company.

Agents for Porto Rico—Messrs. Feddersen & Co.

Receipt No. 857498. 12TH OF MARCH, 1888.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of polic- number 1720984 of this company amounting to £1600 sterling of sum insured for one year from

12th of March 1888 to 12th of March 1889 at four o'clock in the afternoon Sum insured £1600. Premium £40.

FEDDERSEN & CO., *Agents.*

"The Royal Insurance Company.

Agents for Porto Rico—Messrs. Feddersen & Co.

Receipt No. 857536. 11TH OF MARCH, 1889.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of policy No. 1720984 of this company amounting to £1600 sterling of sum insured for one year from 12th of March 1889 to 12th of March 1890, at four o'clock in the afternoon Sum insured £1600 Premium £40.

pp. FEDDERSEN & CO.,
A. SCHNEIDER, *Agts.*

"The Royal Insurance Company.

Agents for Porto Rico, ——.

No. 1159917. SAN JUAN, 12*th of March*, 1890.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of policy No. 1720984 of this company for one year from the 12th of March 1890 to the 12th of March 1891 at four o'clock in the afternoon. Sum insured £1600. Premium, £40§

SOBRINOS DE ESQUIAGA, *Agents.*

The Royal Insurance Company.

Agency in Porto Rico.

No. 1159811. SAN JUAN, 12*th of March*, 1891.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuacion of policy No. 172984 for one year from the 12th of March 1891 to the 12th of March 1892 at four o'clock in the afternoon. Sum insured £1600 Premium £40§

SOBRINOS DE ESQUIAGA, *Agents.*

59 "The Royal Insurance Company.

Agency in Puerto Rico.

No. 1159863. SAN JUAN, 12*th March*, 1892.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of policy No. 1720984 of this company for one year from the 12th of March 1892 to the 12th of March 1893 at four o'clock in the afternoon. Sum insured £1600. Premium £40.

SOBRINOS DE ESQUIAGA,
Per ALVAN DOMINGUEZ, *Agents.*

"The Royal Insurance Company.

Agency in Porto Rico.

No. 1159917. SAN JUAN, *12th of March*, 1893.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of policy No. 1720984 of this company for one year from the 12th of March 1893 to the 12th of March 1894 at four o'clock in the afternoon. Sum insured $1600. Premium £40.

SOBRINOS DE ESQUIAGA,
Per JUAN B. ARSUAGA, *Agents.*

"The Royal Insurance Company.

Agency in Porto Rico.

No. 1159989. SAN JUAN, *12th of March*, 1894.

Received from Don Francisco Martin the sum of forty pounds sterling for the continuance of policy No. 1720984 of this company for one year from the 12th of March 1894 to the 12th of March 1895 at four o'clock in the afternoon. Sum insured £1600. Premium £40.

SOBRINOS DE ESQUIAGA, *Agents.*

"The Royal Insurance Company.

No. 1409964. SAN JUAN, *March 12th*, 1895.

Received of Don Francisco Martin of Ponce the premium below noted for the continuance of policy No. 1720984 of this company in the amount of £1600 sterling for one year from the 12th of March 1895 to the 12th of March 1896 at mid-day. Premium £40.

SOBRINOS DE ESQUIAGA, *Agents.*

The Royal Insurance Company.

No. 1410062. SAN JUAN, P. R, *M'ch* 12, 1896.

Received of Don Francisco Martin the premium below noted for the continuance of policy No. 1720984 of this company in the amount of £1600 sterling for one year from the 12th of March 1896 to the 12th of March 1897 at mid-day. Premium £40.

SOBRINOS DE ESQUIAGA, *Agents.*

"The Royal Insurance Company.

(Compañia de Seguros "Royal.")

No. 1620666. SAN JUAN, *March 12th*, 1897.

Received of Don Francisco Martin of Ponce, P. R. the premium below noted for the continuance of policy in this company issued under the number 1720984, by which is insured the sum of £1600

sterling, from the 12th of March 1897 to the 12th of March, 1898, at mid-day. Premium £40.

SOBRINOS DE ESQUIAGA, *Agents.*

(These were marked as "Exhibit C for pl'ff.")

60 The COURT: There is no receipt from March 1898 to March 1899?

Mr. BOERMAN: No, sir.

Q. Please state whether or not the premium was paid from March 1898 to March 1899?

Ans. Yes, it was paid.

Q. Where is that receipt for that payment?

Ans. It was lost that night also.

Q. Which night?

Ans. The night of the fire.

Q. Was it searched for?

Ans. Yes.

Q. Did they diligently look for it?

Ans. Yes.

Q. What was the result of the search?

Ans. It was not found.

Q. Do you know where it is now?

Ans. No, sir.

Mr. BOERMAN: I would like to ask if the defendant has produced a record of the payment of that premium from their books according to the notice we served on them?

The COURT: If it is not produced you can use secondary evidence.

Q. Can you state the contents of that receipt for the year 1898 to 1898; what was the premium that year on that amount?

Ans. £50.

Q. Can you tell us whether that building and those goods are still in existence?

Ans. They do not exist.

Q. What happened to that building?

Ans. It was destroyed by fire.

Q. In what year?

Ans. In the year 1898.

Q. In what month of that year?

Ans. In the month of August.

Q. Do you remember the date?

Ans. The 19th and 20th of August.

Q. What became of the stock that was in the building?

Ans. It was all destroyed by fire.

Q. State whether or not the company was notified of the fire?

Ans. Yes, it was notified.

Q. About how long after the fire?

Ans. Twenty four hours scarcely.

61 Q. To whom was the notice given personally?

Ans. To Mr. Felice its agent in Ponce.

Q. To whom else was it given?

Ans. To Mr. Esquiaga, the agent in the capital.

Q. What agent made this insurance?

Ans. I do not know.

Q. Who were the agents of that company that year in Ponce?

Ans. Felice y Compañia.

Q. Who were the agents of the company that year in San Juan?

Ans. Sobrinos de Esquiaga y Compañia.

Q. And these are the persons that you said before were notified?

Ans. Yes.

Q. What happened after you notified them?

Ans. I received a letter from them in which they stated the policy would not be paid.

Q. From whom was the letter?

Ans. From Sobrinos de Esquiaga y Cia.

Q. Where is that letter?

Ans. It is lost.

Mr. DEXTER: We ask to have that part of the testimony containing a statement as to the contents of that letter stricken from the record as it is incompetent and not material.

The COURT: How can you prove the contents of that letter except by oral testimony?

Mr. BOERMAN: I offer this as an exhibit.

And thereupon the plaintiff, to further maintain the isssues on his part, offered and introduced into evidence a certain document which is in words and figures as follows, to wit:

"In the United States District Court for Porto Rico.

GUADELUPE VASQUEZ MARTIN ET AL.
against
THE ROYAL INSURANCE COMPANY.

To the above named defendant: Please take notice to produce your letter press copy of a certain letter directed by you through your agents, to wit: Sobrinos de Esquiaga to Francisco Martin about October 1898 in which you stated that you would not pay the insurance on the building and chattels insured by him because you claim that the fire happened through the invasion, to produce such copy at the trial of this action, in default whereof secondary evidence will be introduced of the contents thereof.

(Signed) C. M. BOERMAN,
Plaintiff's Attorney.

Service of the above notice accepted May 15th, 1902.
(Signed) F. H. DEXTER AND
HORTON & CORNWALL,
Attorneys for Defendant."

The COURT: Let it go in.
(Entered and marked "Exhibit D for pl'ff.")

Q. When did your father die?
Ans. In October, 1899.
Q. That is after the fire?
Ans. Yes.

62 Q. What were the contents of that letter that you received from the agents of the company, Esquiaga y Cia.?

The COURT: Tell the substance of it only.

Q. What was it in substance?
Ans. That as these events were produced by a riot they were not compelled to pay.
Q. To which events do they refer?
Ans. To the events that took place in the Coto.
Q. At what time?
Ans. On the 19th and 20th of August.
Q. When did the fire happen?
Ans. The 19th and 20th of August.
Q. How long after the fire did you receive that letter from them?
Ans. More or less, a couple of months after.
Q. Did you have any conversation with Mr. Felice, the agent in Ponce, about that fire?
Ans. Yes.
Q. What did Mr. Felice say about that payment of that loss?
Ans. Mr. Felice gave me a letter and told me to communicate it to Sobrinos de Esquiaga in the capital.
Q. Did he tell you that he would communicate it or that you should communicate it?
Ans. That I must do it.
Q. Did you do it?
Ans. Yes.
Q. Did he personally, with his own words, tell you anything about the payment or the non-payment of this loss?
Ans. No, sir.
Q. Please state whether or not you received any other letter about that time?
Ans. Yes, I received another one.
Q. Did they ever pay any part or the whole of the insurance?
Ans. Nothing.
Q. Where were you at the time the fire originated?
Ans. Here in Ponce.
Q. When did you arrive at the Coto after the fire?
Ans. When the fire was still slumbering.
Q. Did you arrive at night or in the day-time?

Ans. It was at night.

Q. At what hour?

Ans. About three or four o'clock in the morning.

Q. Please state if the provisions and merchandise you have mentioned were in the same building where they were insured?

The COURT: No where were they, ask him.

Q. State, if you know, where were the provisions and merchandise at the time of the fire?

Ans. In the house.

63 Q. In which building?

Ans. In the store-house.

Q. Was that the house you mentioned as being insured?

Ans. Yes.

Q. State what was left of the building after the fire—if anything was left?

Ans. Nothing but cincers.

Q. State from your own knowledge if anything was left of the provisions and merchandise after the fire?

Ans. Nothing was left.

Q. You stated before that the building was owned by your father, but that as to the stock in it—the provisions and merchandise—he was a "socio en comandita." Please explain a little more about that?

Ans. He formed a part of the firm and was a silent partner.

Q. Under what name was that company?

Ans. Martin Bros. & Company.

Q. Who were the brothers?

Ans. Myself and Arturo Martin.

Q. Who is Arturo Martin?

Ans. My brother.

Q. Who else was a member of your firm besides your father, yourself and your brother?

Ans. There were no others.

Q. State what interest, to your knowledge, your father had in those provisions and merchandise?

Mr. DEXTER: I object to the question because the notarial document of the organization of that mercantile society would show that.

The COURT: It does not require a document.

Mr. DEXTER: Under the commercial code you could not have a partnership without that notarial document.

The COURT: The court does not know that law. Proceed.

Q. What was the extent of the interest of your father in that partnership?

Ans. Ten thousand dollars.

Q. That is more than the amount of the insurance is it not?

Mr. DEXTER: The question is objected to because it is immaterial and incompetent.

The COURT: You have already proven what interest he had in the concern.

Q. And the policy was continued all the time in your father's name was it?

Ans. Yes.

Q. For whose benefit?

Ans. For the benefit of all three of us.

64 Q. You mean to say that so far as the merchandise and provisions are concerned?

I will withdraw that question.

Q. Please state if you have received any communication from Esquiaga & Company after their second communication to you?

Ans. After receiving the second one in which they stated they would not pay me, I have received no other.

Q. Please state whether or not you had been in Coto shortly before the fire occurred?

Ans. The day before.

Q. State in what condition was Coto then so far as tranquil-ity was concerned?

Ans. It was in normal condition.

Q. Had you been before that time in Coto?

Ans. Yes.

Q. How long before?

Ans. Two days.

Q. In what condition was it then?

Ans. Normal.

Q. You mean to say two different days in the week before the fire?

Ans. Yes; different days in the same week.

Cross examination.

(By Mr. DEXTER:)

Q. How old are you, Mr. Martin?

Ans. Thirty years old.

Q. At the time of this fire what were you engaged in; what profession or occupation?

Ans. I was here in Ponce with my family.

Q. How long before that time had you been living in Coto?

Ans. Three years.

Q. How long before the fire was it that you and your family went down to Ponce?

Ans. Fifteen days, more or less.

Q. Did all the family go down with you to Ponce?

Ans. The ladies of the family always lived in Ponce but we men came to Ponce now and then.

Q. What was you interest or connection in that business of your father prior to the fire?

Ans. I was an active partner.

Q. When was this society formed under the name of "Martin Hermanos"?

Ans. In 1897. I believe it was in March.

Q. Was that accomplished by means of some writing before a notary?

Ans. Yes.

65 Q. Did your father then retire from business as an active partner?

Ans. Yes.

Q. And the business that formerly belonged to him was turned over to Martin Hermanos?

Ans. Yes.

Q. Where did your father live after the organization of that society?

Ans. He lived here, and there.

Q. Did he give any attention to the business after this organization?

Ans. Yes.

Q. Who managed the business?

Ans. Martin Brothers.

Q. You managed the business did you?

Ans. Yes.

Q. Up to the time of the fire everything was peaceful and quiet in Coto was it?

Ans. Yes.

Q. No excitement?

Ans. None.

Q. No mobs?

Ans. None.

Q. Nobody was threatened with death or the destruction of stealing of their property?

Ans. Nobody.

Q. Nobody's property was taken out of their house by bandits or armed mobs?

Ans. After the insasion?

Q. Yes.

Ans. Nobody.

Q. After the invasion nothing of that kind occurred?

The COURT: I think that is going too far. The question is whether this property was destroyed by reason of a riot or invasion.

Mr. DEXTER: In the time of a riot. I am proving by this witness whether or not this was in any——

The COURT: You do not fix the time. It might be a year from the time of the fire. I do not think you can attack his credibility by immaterial matter.

Q. All these questions that I have asked you refer to a few days before this fire—upon the day of the fire or a day or two before it?

Ans. Nobody was deprived of anything.

Q. Nothing of the kind had happened at any time up to the time of the fire?

Ans. Nothing.

Q. You had no occasion to make any complaint about being attacked on or about the time of this fire?

Ans. No, sir.

Q. How do you know that the premium was paid from March 1898 to March 1899?

Ans. Because I am the same man who paid it.

Q. To whom did you pay it?

Ans. To the house of Felice.

66 Q. Do you remember to which member of the firm?

Ans. I do not remember.

Q. Do you remember the date?

Ans. It was about the date, sometimes two or three days after it was due. We used to carry current accounts with the house.

Q. Speaking of this particular payment in the year 1898, when did you pay that, more or less?

Ans. I do not remember exactly the date of its becoming due.

Q. Was it in April?

Ans. I do not remember.

Q. You think you paid £50 premium?

Ans. Yes.

Q. In what kind of money was that?

Ans. I do not know exactly whether I paid it in cash or not for sometimes the house would put it in the account of Martin Hermanos y Cia., but I think I paid cash generally.

Q. Do you remember receiving this letter from Sobrinos de Esquiaga (exhibiting a letter to witness)

Ans. Yes.

Q. Where is the original of that letter?

Ans. I do not know; it is lost.

Q. And the other letter which you say you received and which was lost, was it received before or after this?

Ans. After this one the one in which they said they would not pay.

Q. And you have lost that?

Ans. Yes.

Q. Do you remember about how long after this one?

Ans. More or less about a couple of months.

Q. How long after this one of the 19th of October, 1898 did you receive the other letter in which you say the company refused to pay you? About how many weeks or months after?

Ans. I do not remember exactly.

Q. About one month?

Ans. Probably a month; one or two months.

Q. Did you see Mr. Felice when you went down to pay this premium?

Ans. I do not remember.

Q. Did I understand you to say in your testimony this mourning that you talked with Mr. Felice and notified him of the loss?
Ans. Yes, I saw him.
Q. Was he the one you notified about the fire?
Ans. Yes.
Q. About when was that?
Ans. The same day or the day after the fire.
Q. You are sure about that?
Ans. Yes.
67 Q. How did you notify him?
Ans. Orally, and he made me communicate with the house of Esquiaga in the capital.
Q. Did you at once notify them of the loss?
Ans. The same day or the day after.

The COURT: I have heard nothing about the value of the property—the value of the building or of the merchandise.
Mr. BOERMAN: I will ask him if it is necessary.

(Rebuttal.)

By Mr. BOERMAN:

Q. When you testified that there were no threatenings or attacks upon persons before the fire, you mean so far as your knowledge was concerned?
Ans. There was nothing.
Q. There may have been, so far as you do not know, some kind of these things?
Ans. Before the fire there was absolutely nothing.
Q. That is, while you were there?
Ans. Yes.
Q. The time you refer to is from after the invasion up to the time of the fire, is it?
Ans. Yes.
Q. So far as your knowledge of the building extends, what was it worth?
Ans. The commercial building was worth 4000 pesos provincial, and the dwelling-house was worth 5000 pesos provincial.
Q. To your knowledge as a partner in that business, of what value was the merchandise and the provisions at that time in that store?
Ans. The provisions and merchandise were worth approximately 15000 pesos.

By the COURT:

Q. What did you say the building was worth?
Ans. There were two buildings—one a store and the other a residence.
Q. Were they both in one building?
Ans. Yes, joined together.
Q. What were they worth?

Ans. 4000 pesos and 5000 pesos provincial.

68 (By Mr. BOERMAN:)

Q. Of what materials were the buildings?

Ans. The commercial house was a frame building, and the dwelling house adjoining it was of stone.

Q. What were they covered with?

Ans. Zinc.

Q. In what condition were the houses at that time?

Ans. The stone building had been built the previous year but the frame building was about 25 years old.

Q. You say the brick building was built about a year before: Was it built anew or re-built?

Mr. DEXTER: I object to that line of examination. The policy shows that this building was of timber and not of "mamposteria."

The COURT: Ask the question.

Mr. DEXTER: Please note an exception.

The COURT: I understand this is all one building.

Mr. BOERMAN: Yes.

The COURT: And some of it was built of stone.

Mr. BOERMAN: Yes.

Mr. DEXTER: He has testified there were two buildings—one of which was used as a dwelling house, and which had a certain value, and another was a commercial house having a certain value. We object to any testimony as to any other house than that insured in the policy.

By the COURT:

Q. Was this all one building—a part of it being brick and a part of it being wood and frame?

Ans. No, the frame building had been built twenty five years previously.

Q. Were these two buildings joined together?

Ans. Yes, and they had communication through doors.

Q. How far apart were they?

Ans. They were no distance; they were united.

Mr. DEXTER: He has testified that the "mamposteria" building was built about a year before and that this frame building was built twenty five years before. We object to any testimony as to any new building built a year or so ago.

The COURT: I am inclined to think the policy would not embrace a new building. Repeat the question, Mr Boerman.

69 Q. Was that brick building built anew or was it the old building repaired?

Mr. DEXTER: I object to the question as the policy of insurance speaks of but one building.

The COURT: I will permit you to prove the building was repaired, if that be a fact. If it was a new building the insurance will not cover it.

Mr. DEXTER: The defendant desires to except to the admission of any testimony which has for its purpose to show that this building was a new building and one not mentioned in the policy.

The COURT: That is exactly what the court decides; if it is a new building there cannot be an- testimony as to it.

Mr. DEXTER: The policy was issued on one building, and not on any other.

The COURT: The policy was issued on one building, and if it was merely repaired it would remain on all of it. It is unreasonable to my mind to suppose that a man would own a house, a portion of it being brick—one-half, and the other part frame and not take out insurance on the whole building. Proceed.

Q. Before the brick building was built what was there in the same place on the same lot?

Ans. There was a little dining-room which was thrown down.

Q. Was that dining-room a part of the whole house insured?

Ans. Yes.

Q. What else was there besides that little dining-room, if anything?

Ans. Nothing.

Q. In place of that dining-room there were placed how many other rooms? Of what did that brick building consist that was built in the place of the little dining-room?

Mr. CORNWELL: I think that is immaterial, if the court please. He has testified that there was nothing but a little dining-room and that that was torn down, and anything new put there would not be covered by the policy.

The COURT: It looks that way to me also. I think you are confined to your policy, Mr. Boerman.

Q. So far as you know from your side the conditions of the policy were complied with, were they?

The COURT: I do not think that is competent. That is a conclusion of law.

Q. Was there any release or discharge given by you to that company?

The COURT: That is a matter of defense. It is not necessary to ask him about that. There might not be any testimony offered in support of any release.

70 By the COURT:

Q. This insurance was renewed on March 12, 1898, and the property was burned in August, 1898. What was the value of the frame building at the time it was destroyed in that fire?

Ans. Three or four thousand pesos.

Q. Which? Three thousand or four thousand? How much do you think it was worth?

Ans. About three thousand pesos: it was old.

Q. This insurance was made in March, 1898. Now, of the stock of goods that was in there at the time, what proportion remained on hand in August, 1898?

Ans. In August there must have been approximately the amount of 15,000 pesos, which I have mentioned. In March there were more.

Q. Were there 15,000 pesos on hand in August of the same goods that were on hand in March previous?

Ans. In regard to the merchandise it may be so, but not in regard to the provisions because they were renewed every now and then.

Q. What was the value of the stock of goods on hand in March 1898?

Ans. I cannot state it precisely, but it was more than in August, 1898.

Q. State what amount you thought was on hand in March, 1898?

Ans. Approximately 20,000 pesos.

Q. Now, in this matter of goods on hand in March, 1898—how many and what value do you think remained in August, 1898?

Ans. it was continually renewed and there must have been some 15,000 pesos.

Q. What old goods remained on hand?

Ans. About clothes and things of that kind, together with coffee, they are things which were kept in stock; but in regard to provisions they were renewed from time to time.

Q. I want you to state what, in your opinion, was the value of the old goods that remained on hand in August at the time of the fire?

Ans. In regard to tobacco, coffee and dry-goods there were some 12,000 pesos.

By Mr. CORNWELL:

Q. You testified that there were approximately 12,000 pesos' worth of tobacco and sugar, and that class of supplies at the time of the fire, did you not?

The COURT: He did not state that. They were old goods on hand in March and 12,000 pesos of goods on hand in August.

Q. How much tobacco was there on hand at the time of the fire?

Ans. There may have been about 4,000 pesos' worth.

71 Q. How long had you had that in the store?

Ans. From about March and April when the crop begins.

Q. And it all came in after the months of March and April?

Ans. Oh, no, there was some old stock there.

Q. That old stock had been disposed of long before the fire?

Mr. BOERMAN: I object to that. The witness did not state so. He stated a part of it was.

The COURT: I think he stated as plain as plain could be that the provisions were changed, but that the coffee and some other goods remained—a good many of them. I will sustain an objection to that question.

Q. How much of the old stock did you have on hand at the time of the fire?

Ans. It embraced about 15,000 pesos.

Q. I refer to the old stock of tobacco—not of the new crop but of the old crop?

Ans. About 500 pesos.

Q. How much coffee did you have on hand at the time of the fire?

Ans. Fifteen or twenty sacks, more or less.

Q. How much coffee did you have on hand at the time of renewing the insurance policy in March, 1898?

Ans. Then probably there were 250 or 300 quintals.

Q. What was the value of coffee, more or less, as you remember, in March, 1898?

Ans. I think it was worth 25 pesos.

Q. How much rice did you have on hand in March, 1898.

Ans. I cannot state it precisely.

Q. How many days' stock of rice do you carry on hand? How many days did it take you to dispose of the stock of rice you generally carried?

Ans. It all depends upon the quantity.

Q. You never bought over a month's supply of rice at a time did you?

Ans. Yes, I have bought it in bags.

Q. But generally you have bought supplies of rice that lasted a less time?

Ans. Yes, I used to generally buy Valencian rice. Sometimes fifty sacks.

(Rebuttal.)

(By Mr. BOERMAN:)

Q. When was the tobacco crop gathered in that year 1898—what month?

Ans. From April to June; beginning with April.

72 Q. And besides these bales of the old crop how much tobacco at the time of the fire was there of the new crop?

Ans. It was not packed; it was loose in boxes—in quintals put in boxes.

Q. How many quintals then, more or less?

Ans. In leaf there may have been forty quintals; in rolls 400 twists.

Q. What was the value of a roll?

Ans. Rolls are bought at 8 pesos and sold at 10 or 12.

Q. What was the value of a quintal in leaf?

Ans. From 3 to 30 pesos.

Q. Of what quality was that tobacco that you had at the store—what price?

Ans. It was of all kinds—some low and some high.

Mr. Boerman for plaintiff here announced that the plaintiff rested his case.

And thereupon, the defendant, The Royal Insurance Company, in order to maintain the issues on its part, introduced as a witness Mr. P. J. ROSALY, who, after being duly sworn, testified as follows:

P. J. ROSALY (for the defense).

(By Mr. DEXTER:)

Q. Please state your name?

—. P. J. Rosaly.

Q. Residence and occupation?

Ans. Sugar planter; connected with banking house of De Ford & Company; I live in Ponce.

Q. Were you ever connected with the firm of Felice y Cia.?

Ans. Yes.

Q. Between what periods of time?

Ans. 1895 and 1899.

Q. What time in 1899?

Ans. In December.

Q. While you were connected with Felice y Cia. did you have anything to do with the business of the Royal Insurance Company, of which they were the agents?

Ans. Yes, I was in charge of it.

73 Q. State what, if any, claims were made to you, or the agents with whom you were associated, by Francisco Martin, or anybody for him, by which any particular statement or account of property alleged to have been lost by the said Francisco Martin by fire in the Coto in August, 1898, was rendered?

Ans. Yes, a fire occurred in the Coto Laurél.

Q. What, if any, statement of account showing in detail, or otherwise the goods claimed to have been lost, was furnished to the agents?

Ans. They never presented any detailed account.

Q. When, if you know, was it that the plaintiff, or anybody representing him or Francisco Martin, was notified that the company refused to pay? How long after the fire?

Ans. It must have been two or three months.

Q. Did Felice & Company have any authority to settle this loss without reference of the same to the main office in London?

Ans. No, they did not.

Q. What action was taken by you or the agent with reference to submitting this matter to the company at London to determine whether or not the loss would be paid.

Ans. When Mr. Martin went to the office to report the fire I told him we would have to report the matter to Sobrinos de Esquiaga in San Juan, who in turn would report to the company.

Q. When was that, right after the fire?

Ans. Some days after the fire; yes.

Q. Did you request of either Francisco Martin or the plaintiff the detailed proofs of loss required by the policy?

Ans. I did ask him to make a statement of the loss.

Q. Did he do so?

Ans. No, sir.

Q. Was that before or after you notified him that the company would not pay because the loss occurred during a riot?

Ans. That was before.

Q. Now how long before?

Ans. As soon as I saw him when he came to speak about the fire, I told him to make the statement.

Q. What statement do you refer to—the statement contained in the conditions of the policy?

Ans. No, the statement as to the goods insured.

Q. Did he furnished any statement or proofs whatsoever?

Ans. No, sir; none at all.

Q. Did you ever have anything to do with the plaintiff or Francisco Martin about cancelling that policy or making a release?

Ans. Yes, when the answer came from London to San Juan and thence to Ponce I reported it to the defendant, and they then proposed to release the policy and return the premium since they could not collect the amount.

Q. What sum of money, if any, was paid to Francisco Martin to release the company?

Ans. The amount of the premium since the fire up to the due date. I do not remember the exact amount.

74 Q. I now hand you these two papers, and ask you whether or not you remember them?

Ans. Yes.

And thereupon the defendant, The Royal Insurance Company, to further maintain the issues on its behalf, offered and introduced in evidence a certain document, in duplicate, the official translation of which is as follows:

"Received of Messrs. Felice, Acosta & Company, on account of Sobrinos de Esquiaga, general agents of the Royal Insurance Company, the sum of one hundred and seventy four pesos and twelve cents as a return of the premiums of the policy No. 1720984.

Ponce, February 4th, 1899.

(Signed) FRANCISCO MARTIN.

$174.12 P. R. Cy. (Duplicate.)"

The above is a true translation.

(Signed) Z. VALL SPINOSA,

Interpreter, U. S. Dist. Court for Porto Rico."

(Marked "Exhibit 1 for def't.)

Q. Will you please explain the circumstances under which these receipts were given and what for?

Ans. When Mr. Martin was notified that the company would not pay the amount of the insurance——

Mr. BOERMAN: I object to it on the ground that the receipts

speak for themselves, and further that this is a receipt from a person who is now dead, and this witness at that time was an employé of the actual defendant in this case, and he should not be allowed to testify to any transaction between him and the dead person.

Mr. DEXTER: I will withdraw the question for the present and ask him this one:

Q. Did you ever have any conversation with Ruperto Martin, the plaintiff in this case about the return of this premium, or the settlement of the policy?

Ans. Yes.

Q. Please state what that was?

Ans. I had several conversations with him about the case.

Q. Whom did he represent in these conversations?

Ans. His father.

Q. What were these conversations and what were the results of them?

Ans. After the first conversation—I could not say exactly whether it was Ruperto Martin or his father——

The COURT: You are confined to what occurred between you and the living man in this case, Ruperto Martin.

75 Mr. BOERMAN: I object to the question in the form given because no time is set out. If it was after the death of Francisco Martin it may be competent, but if it was in the life of Francisco Martin there was no authority in anybody to act for him at that time, and even if Ruperto Martin had acted it was without authority?

The COURT: Suppose they prove he was his agent.

Mr. BOERMAN: But they have not proved it.

Q. With reference to the conversation with Ruperto Martin and to the cancellation of the policy, please state what he said?

Mr. BOERMAN: I object to the question until it is shown that Ruperto Martin was authorized by his father to make the agreement, if there was any.

The COURT: Is this confined to the conversations after the death of the father or before?

Q. When were these conversations?

Ans. Before the death of the father.

Q. Whom did Ruperto Martin claim he represented?

Mr. BOERMAN: I object to the question. No claim he could have made as to agency would be binding.

The COURT: An agency cannot be proven by a declaration of the agent himself. If this witness knows in any way, by the statement of the father, that this party was his agent then the statements of this witness are competent in the matter.

Q. Do you know whether Ruperto Martin was authorized by his father to treat with you in this matter?

Ans. Yes.

Q. How often did he come there representing the father, or bearing any letters from the father?

Mr. BOERMAN: I object to the question. He should be asked how he knows it.

The COURT: You can cross-examine him.

Q. Please give those conversations and the effect of them and what was done by reason of these conversations with reference to the repayment of the premiums and the cancellation of the policy?

Ans. What was said from the beginning, you mean.

Q. Yes, with reference to the return of the premium and the cancellation of the policy?

Ans. When I first stated to him that the matter had to be submitted to Messrs. Sobrinos de Esquiaga at San Juan and that they, in their turn, would submit it to the head officer of the company in London, he asked me if it was not better to go to San Juan and see Sobrinos de Esquiaga, and I told him it was better, and he did go to San Juan and after returning he called on me again, and
76 he repeatedly said that he could not do anything with them because they could not do anything until they heard from London.

Q. What was said or agreed about the return of the premium or the cancellation of the policy?

Mr. BOERMAN: I object to it because it is hearsay.

The COURT: The declarations of the agent are always competent against the principal.

Mr. BOERMAN: I would request your honor to allow me to cross-examine the witness now as to this point.

The COURT: I cannot do that. You can cross-examine him when the time comes for it. Repeat the question.

Q. was repeated and Mr. Dexter added the words: "And the release of the loss," ma-ing the question read: What was said or agreed about the return of the premium or the cancellation of the policy, and the release of the loss?

Ans. When the answer came from London he was notified that they would not pay for the reasons stated.

Q. Do you remember about when that was, approximately?

Ans. Somewhere about November. I am not positice about the date. He was notified that the company would not pay for the reasons stated, and then Mr. Martin——

Q. Which one—Francisco or Ruperto?

Ans. Francisco Martin, the father?

The COURT: I do not think you can prove anything about that.

Q. What conversation or agreement was made twith this plaintiff here—Ruperto—about the release?

Mr. BOERMAN: I object to the question as it is leading.

The COURT: Ask what was said, if anything.

Q. What was said, if anything, with this plaintiff; not with the old gentlemen, but with this plaintiff here?

Mr. BOERMAN: I object to this question also as under the conditions of the policy and the custom the premium is always returned, even if the loss has been paid for after the time of the fire and up to within one year. The premium is always paid back; that is, by law, always payable.

The COURT: Do you mean to say that under the law the insurance company is bound to pay back the premium in addition to the loss.

Mr. BOERMAN: To pay back the premium for the balance of the year.

The COURT: Ask the question.

Mr. DEXTER: The consideration was—the company took the position that it was not liable and it returned this premium in order to retain the release.

77 The COURT: The whole premium or from the time of the fire

Mr. DEXTER: I think from the time of the fire.

Mr. BOERMAN: There was no consideration.

The COURT: I will control that and hear what he has to say. Ask the question.

Q. What was said, if anything, with this plaintiff about this matter?

Ans. I could not say whether there was any agreement with him.

The COURT: Proceed to something else then.

Q. Do you know the conditions that prevailed in the barrio of Coto Laurel on August 19th, 1898?

Ans. Yes.

Q. With reference to insurrection, riot and invasion?

Ans. Yes.

Q. Please state what that was, of your own knowledge?

Ans. Do you mean to say if I was present?

Q. Do you know whether or not there was any invasion in progress at the time and place of your own knowledge?

Ans. Yes.

Q. What was that invasion?

An-. The American troops were there a little while before and I went there personally the day after the fire.

Q. What was the condition of affairs as you found them?

The COURT: That is not competent.

Q. What time of the day did you arrive?

Ans. In the morning about 8 o'clock.

Q. What were the conditions that you found there at that time?

Ans. The American troops were there with a captain in charge—some prisoners and some natives were running away from the place.

Q. Do you know the occasion of the troops coming there?

Ans. Yes.

Q. What was that? Please state what you saw there that morning, and what was the cause of the troops coming there?

Ans. I saw the rest of the fire there of the house that was burned, and some prisoners.

Q. When did the troops land in Porto Rico?

Ans. July 25th in Guanica and 28th in Ponce.

Q. From the time that they landed in Ponce in which direction did they proceed?

Ans. Toward San Juan by the military road; towards Utuado by the military road, and they were at Guanica and Arroyo.

78 Q. On August —, 1898, or about that date what conditions did the troops encounter about that place, and in that vicinity?

Ans. There had been some trouble about there at Soto, and the troops had been ordered to go down and occupy Coto Laurél.

Q. Did you have occasion to go yourself to the military commander about that time?

Ans. Yes.

Q. Whom did you see?

Ans. I saw General Wis*l*on.

Q. Did you see this plaintiff there when you went there to see Gen. Wilson?

Ans. Yes.

Q. About when was that?

Ans. Some days before the fire.

Q. About how many days more or less?

Ans. Say, three.

Q. Did you hear what he said?

Ans. Do you mean Mr. Martin?

Q. Yes.

Mr. BOERMAN: I object to it as it is a conversation between two parties at that time that had no interest in this suit. This man was not executor then.

Mr. DEXTER: I want to contradict the other witness.

Q. What was said by him there at that time, two or three days before the fire?

Ans. He said that the place was in a condition of riot and he was not secure and his properties were in danger.

Q Did he say anything about the provisions of the store being stolen and taken out of the place?

Ans. His own place, you mean?

The COURT: Do not lead the witness. Gentlemen of the jury this testimony is only competent in so far as it may tend to contradict the plaintiff in the case.

Q. Do you know if on August 19th, 1898, there was any insurrection or riot or civil commotion in Coto Laurél?

Ans. Yes, the fire was attributed to that.

The COURT: Do not tell what you heard.

Q. Please state the general condition existing there with reference to riot, civil commotion or insurrection at that time—Aug. 19, or in those days immediately before the fire?

Ans. All I know about the conditions is what I heard.

Q. Where were you on August 19, 1898?

Ans. Here in Ponce.

Q. How far was Coto from Ponce?

Ans. About one half an hour, or less than that.

Q. About what time immediately prior thereto did you yourself see anything of a riot, civil commotion or insurrection?

79 The COURT: Confine it to that time and place?

Ans. I was not there immediately before the fire.

Q. Do you know if in the vicinity of Ponce and Coto between the time the Americans landed in Porto Rico and up to the time of this fire, what the general condition of the community around about Coto and Ponce was with reference to insurrection and riot?

Mr. BOERMAN: I object to the question as the place is not fixed.

The COURT: Put it at that place or the immediate vicinity.

Mr. DEXTER: I think the fair construction of the policy is not to limit it to the immediate place, but the language of the policy is as to the existence of a riot.

The COURT: It must be in that place; in that immediate vicinity.

Q. Do you know whether there was martial law in Coto Laurél at that time?

Ans. No, I do not know it.

Q. Was there immediately upon the occasion of the fire?

Ans. Yes.

The COURT: I think what occurred afterwards is not competent.

Q. Do you know of your own knowledge whether any prisoners were taken and accused of this fire?

Ans. Yes.

Q. Who were they, if you know?

Ans. I do not know their names.

Q. Where were they tried?

Mr. BOERMAN: I object to the question. It is not competent.

The COURT: No, that is not competent.

Cross-examination:

Q. When you said that he did not present any particulars to you, you mean that he did not present any particulars to your firm of Felice, Acosta & Company?

Ans. Yes.

Q. And you do not know of your knowledge, whether he did or did not present any particulars to the firm of Sobrinos de Esquiaga?

Ans. I do not know.
Q. As a matter of fact, you told him to present the claim to Esquiaga?
Ans. No, sir; I asked him to send it in.
Q. Did you refer him to Esquiaga?
Ans. Afterwards, yes.
Q. What did you say?
Ans. I said: Go there and report it to Esquiaga
80 Q. As I understand, you said before that with the plaintiff, Ruperto Martin, there was no agreement in any way with you.
Ans. I said——

The COURT: He has already stated that.

Q. How many days before the fire did you go to Coto?
Ans. Several months—one or two months.
Q. And so, you have not been to Coto from several months before the fire until the day after the fire?
Ans. Yes.
Q. When you came to Coto what time was it?
Ans. About eight o'clock in the morning.
Q. Are you sure that it was not later than that?
Ans. It was in the morning: I left here about 7.30 and must have arrived there about then.

(Witness retires.)

And thereupon the defendant to further maintain the issues on its part, introduced as a witness HENRY C. FRITZE, who being duly sworn, testified as follows:

(HENRY FRITZE) for defense.

(By Mr. DEXTER:)

Q. Mr. Fritze, what is your full name?
Ans. Henry C. Fritze.
Q. Where do you live?
Ans. Here in Ponce.

Mr. DEXTER: I now offer in evidence a copy of the letter from Sobrinos de Esquiaga to Mr. Martin.
Mr. BOERMAN: I object to the use of this copy because we have never had a notice from the defendant to produce the original, and this may be a true copy and may not.
The COURT: I think you will have to notify them to produce the original before you can introduce secondary evidence.

Q. Mr. Fritze, do you know the plaintiff in this case?
Ans. Yes.
Q. Did you see him anywhere a few days before August 19, 1898?
Ans. I saw Mr. Martin one night at General Wilson's office.
Q. About when was that if you remember?

Ans. A few days after the American troops had disembarked.

Q. Did you hear what he said?

81 Mr. BOERMAN: I object to the question because this is hearsay and secondary evidence, unless they first called him and asked him and then wanted to contradict him with another witness.

The COURT: I think you should have asked the party whether he said so and so. You should have examined him on these points. You can attack him on these points by proving a different state of facts, but you must first ask him what he said in reference to it.

Mr. DEXTER: I will ask your honor's permission then to recall Mr. Martin in order to examine him on this point.

The COURT: Well, call him.

(Mr. Fritze makes way for Mr. Martin who takes the stand.)

RUPERTO MARTIN—recalled.

Cross-examination (con.).

By Mr. DEXTER:

Q. Did you not have occasion to go and see General Wilson and ask for protection from the disordered conditions that prevailed in and near Coto Laurél before the fire?

Ans. The same day that the American troops landed I was here in Ponce. I heard reports from the Coto that they were going to burn the whole barrio that night, and then I sought General Wilson to make him understand that I had interests there, because on that same day General Miles had issued a proclamation in which he said he would defend the lives and property of the people. I asked him to lend me force enough to defend my interests. He immediately gave me 30 or 40 men. We left about 11 o'clock that night. The interview that night was at about 9 o'clock, and we left Ponce about 11. We arrived at the second river and there we had to camp because the troops would not go further. In the morning we proceeded to the Coto and we arrived and found nothing had occurred and the troops remained there in the advance.

Q. Is it not a fact that your place was visited a few nights before the fire and a large amounts of provisions were taken out ij carts by some unknown men.

Ans. It was not so it happened.

Q. How was it?

Ans. Bad people from Ponce arrived there drinking and they continued to drink and then in the store they began to talk about all the Spaniards, and as I was the son of a Spaniard the moment they left the store I ordered the whole establishment to be locked up and came to Ponce.

Q. Did not they take forcibly a large amount of provisions out of the store?

Ans. No; they only broke the glass.

82 Q. And nobody, prior to the fire, and within a short time prior thereto took away any provisions forcibly from your place—merchandise of any kind?

Ans. No, sir; except those people who came through violence into my house.

Q. Did you not appear before the court to accuse and testify as to certain persons having stolen and taken away a large amount of provisions and merchandise?

Mr. BOERMAN: I object to that; the witness is a willing witness and should not be impeached.

The COURT: No, he is your witness. Ask the question.

Q. was read.

Ans. I went before the court because these individuals, after the store had been closed, broke down and tore, but without entering the store——

Q. What date was it that these individuals came there?

Ans. Some days before the fire, I do not remember the date.

Q. Did you not appear before the court martial and accuse certain persons of having set fire to this store on August 19, 1902.

Mr. BOERMAN: I object to the question as it is after the fire.

The COURT: The question is, did he not appear; if it is not a fact that he did. Ask the question.

Q. was read.

Ans. No, sir.

Q. Have you the original of that letter (exhibiting) Mr. Martin?

Ans. No, I have not.

Q. Where is it?

Ans. It is lost.

Mr. DEXTER: I ask now, in as much as the witness has admitted that he received the original and that it is lost that we be allowed to introduce this in evidence.

Mr. BOERMAN: We were not asked to find it; we may have found it.

The COURT: The witnesses testified it was lost.

Mr. BOERMAN: But it may be found.

The COURT: I think it is competent. Let it go in.

And thereupon the defendant, to further maintain the issues on its part, offered and introduced in evidence a certain document (Exhibit 2 for def't), which, copied, is in words and figures as follows, to wit:

83 (EXHIBIT 2 FOR DEF'T—TRANSLATION.)

"SAN JUAN, P. R., *October* 19, 1898.

Don Francisco Martin, Ponce.

DEAR SIR: We have at hand your favor of the 10th instant, and in answer beg to state that just as soon as we are advised by the company of its resolution on the Coto Laurel matter we shall communicate the same to you for your guidance.

This is as much as we can tell you for the present, and in the meanwhile we repeat that we are,

Yours very truly, etc.,

(Signed) SOBRINOS DE ESQUIAGA."

(Copy.)

Q. Do you remember seeing Mr. Fritze present during this conversation?

Ans. Yes, there were several consuls there.

Q. Do you remember what day it was?

Ans. The same day the American troops landed in Ponce.

Q. Did you go to see General Wilson again upon the same subject?

Ans. No, sir.

Q. Did you not call again and ask for protection after that time?

Ans. No, sir.

Rebuttal.

(By Mr. BOERMAN:)

Q. To make it clear, you say when you went to see General Wilson that it was on the day the troops entered Ponce—was it then the 25th of July?

Aus. It was the day the American troops came in and the Spanish flag was hauled down.

Q. It was in the month of July, was it not?

Ans. I think that the landing in Guanica was made on the 24th of July, and it must have been the 25th, 26th or 27th when they came in here.

(Mr. Martin retires.)

84 HENRY C. FRITZE—Recalled.

(By Mr. DEXTER:)

Q. Do you remember having occasion to call on General Wilson in the summer of 1898 in company with other consuls?

Ans. Yes.

Q. About how long after the invasion was that?

Ans. I had occasion to see General Wilson almost daily for eight or ten days.

Q. Do you recollect when it was that you saw Mr. Martin, the plaintiff here?

Ans. I do not recollect the exact date, but I think it was during the first days that General Wilson was here.

Q. Do you know about when he arrived here?

Ans. He arrived on the 27th of July, 1898.

Q. And it was only a few days after that you saw Mr. Martin?

Ans. Yes, some time afterwards; I do not think it was the same day.

Q. State, if you know of your own knowledge, there was an invasion existing in and about Coto Laurel on the 19th day of August, 1898?

Ans. I remember that during the first weeks the American troops were here, there was a certain amount of——

Q. I speak now of invasion by foreign troops; if there was an invasion in Porto Rico and in the vicinity of Coto Laurel on the 19th day of August, 1898?

Ans. What do you mean by an invasion.

Q. I mean a military invasion?

Ans. A military occupation; of course there was.

Q. Of what nation was the invading army?

Ans. The American troops.

Q. With whom were these troops at war, if you know?

Ans. With Spain.

Q. Do you know, of your own knowledge, if there was an insurrection in or near the immediate vicinity of Coto Laurel on the 19th of August, 1898?

Ans. I could not call it an insurrection but there was a general state of insecurity.

Q. What about mobs and riots in and near Coto Laurel on the 19th of August, 1898?

Ans. I cannot precise the date; if you ask me whether there was a riot there on that day I cannot say; there has taken place disorder in Coto Laurel but I cannot remember the exact date, so if you ask me if it was on the 19th, I cannot say.

Q. What was the general condition in an- about that vicinity of Coto Laurel about that time?

Ans. Very insecure.

85 Q. By what reason?

Ans. On account of the Puerto Ricans.

Mr. BOERMAN: That is merely a matter of opinion.

Q. State whether things were normal?

Ans. They were absolutely unnormal; not at all normal.

Q. What are the facts upon which you base that statement?

Ans. There was a general state of disorder which prevailed after the landing of the American troops.

Q. In and about the vicinity of Coto?

Ans. I know perfectly well that during the first days or even the first weeks after the landing of the American troops there was a

great deal of disorder going on in and near the Coto, just the same as in the other parts.

The COURT: Was this on or about the 19th of August?

Ans. About three weeks had passed since the Americans came in, and I recollect perfectly well that an orderly state of affairs had not been re-established by that time.

Cross-examination.

(By Mr. BOERMAN:)

Q. When were you in the Coto before the fire and before the 19th of August?

Ans. It would be impossible for me to state at what time I went there.

Q. Were you, during the month of August, in the Coto?

Ans. I cannot say that; it is about four years now since then and I cannot recollect. I know I have not been there after the landing of the troops.

Q. So all that you have testified is hearsay?

Ans. Oh, yes.

Mr. BOERMAN: I now move the court, under the witnesse's statement, to strike out all of his testimony as to this matter as it is hearsay only.

The COURT: You will have to confine it to the actual conditions at the place where the insurance existed. The object of the provision is, of course, that the insured is not to suffer for any loss that occurs by reason of a riot at that place, or invasion at that place. If you prove there is a riot in *in* Ponce, it might not reach there and he might not be in any danger. I think the witness has to speak of his own knowledge.

The WITNESS: Will your honor allow me to say something? I want simply to state that in my character as German vice-consul I was, during the first days of the invasion, a great deal in the vicinity of the then authorities here, and while of course, I was not personally present at Coto I knew of the situation.

86 The COURT: Well, that is not competent.

Q. You are the general agent of several fire insurance companies, are you not?

Ans. I personally am not but my house is.

Q. Of about how many?

Ans. The general agency is in our house in San Juan and not here. We are the sub-agents of the houses of which our house in San Juan is the general agent.

Q. Of about how many?

Ans. Four or five; I do not know.

(Witness retires.)

And thereupon, the defendant, Royal Insurance Company, to further maintain the issues on its part called and produced as a witness MARIA BALBINA RODRIGUEZ, who being duly sworn, took the stand and testified as follows:

(MARIA BALBINA RODRIGUEZ) (for def.).

(By Mr. DEXTER:)

Q. Please state your name?
Ans. Maria Balbina Rodriguez.
Q. Where do you live?
Ans. Now in the Barrio Jacaguas.
Q. Where did you live in the month of August, 1898?
Ans. In Coto.
Q. Were you living there all of that month?
Ans. Yes, and I was living there previously.
Q. Do you remember the fire that took place there on the night of the 19th of August, 1898, when the house of Mr. Francisco Martin burned?
Ans. Yes.
Q. What was the condition in the Coto the night the house burned; were the people quiet, or was there any excitement going on?
Ans. When we went to bed there was not a great movement.
Q. After that what was the first you knew about the fire going on?
Ans. Between ten and eleven we heard a movement there.
Q. What was that movement?
Ans. Persons and patrols of people.
Q. What were they doing?
Ans. That I do not know; I kept inside the house.
Q. Were they quiet or noisy?
Ans. They were very noisy; there was a great movement.
87 Q. Do you know where these people came from?
Ans. No, sir.
Q. Were any estates fired, or people killed?

The COURT: Do not lead the witness.

Q. What noises did you hear that night?

Mr. BOERMAN: That is assuming that there were noises.
The COURT: Ask the question what occurred.

Q. What occurred?
Ans. At that moment we heard voices saying there was a fire at the house of Martin.
Q. Did you see any strange people in town?

Mr. BOERMAN: I object as it is immaterial and leading.
The COURT: Askn the question.

Q. Did you see any strange people in the barrio that night?
Ans. Yes.
Q. Many or few?

Ans. Many.

Q. What did they seem to be doing?

Ans. They were doing something bad because there were many of them.

The COURT: Strike that last answer out.

Q. Do you know of your own knowledge what was going on?

Ans. Yes; they were burning down the houses.

Q. Did you see any provisions or other property taken out of any of the houses; did you see them carry away anything or take anything away from the houses.

Mr. BOERMAN: I think that is leading.

The COURT: Ask her what if anything they did.

Q. What else did you see them doing?

Ans. I did not see them doing anything more but there was a fire.

Cross-examination:

Q. Did you see anybody setting fire to the house?

Ans. Not at night but in the day time.

Q. Then when you said that they were putting fire to the house it was only hearsay, was it not? When you testified they were burning the houses it was only from hearsay, was it not? You did not see anybody putting fire to the house did you?

Ans. When I heard it I got up and saw it. I heard voices saying that there was a fire at the house of Martin and as I was living so near to it, I got up.

88 Q. How long did you sleep when you went to bed that night; how many hours did you sleep?

Ans. We did not sleep any because we went to bed at 9 o'clock, and soon after that we heard the movement.

(Witness retires.)

And thereupon the defendant, Royal Insurance Company, to further maintain the issues on its part, called and produced as a witness JOSÉ LARIO ROCHE, who, being duly sworn, took the stand and testified as follows:

(JOSÉ LARIO ROCHE) (for def.)

(By Mr. DEXTER:)

Q. What is your name and occupation?

Ans. My name is José Lario Roche; I am the alcalde of the barrio, and when the man came to summons me he had the wrong summons, he had a summons for Ramon Roche.

The COURT: That is all right. Go on if this is the witness you wanted.

Q. Where did you live in the month of August, 1898?

Ans. In the barrio of the Coto.

Q. Were you there on the night of August 19, 1898?
Ans. I was in my store.
Q. What was your business at that time?
Ans. My business was having a little store a little lower down.
Q. What office did you hold there at that time?
Ans. I was the commissary of the barrio.
Q. Please state what happened on the night of the 19th of August 1898 when the house of Mr. Francisco Martin burned?
Ans. That night there came a cart-load of men from down below.
Q. Who were these men—what kind of people were they?
Ans. I did not know them.
Q. What did they do?
Ans. They fired an estate opposite my house and as I was the commissary of the barrio I told them not to break the peace in the place as we were in a state of war.
89 Q. Were these people officers or soldiers?
Ans. They were some individuals that were going there, and I went and told them not to fire.
Q. At whom were they firing?
Ans. At the air.
Q. Were they soldiers, or officers of the law?
Ans. As it was night and dark I could not see their clothes, but I saw them raise a flag, or at least they called it that.
Q. Did you see what flag that was?
Ans. I saw the flag, and it was a flag—an American flag but it was at night and you could not see well. They were people of the country though because they spoke Spanish well.
Q. What did they do then?
Ans. They went on and as they were armed I did not follow them.
Q. How long after that did the fire occur at Francisco Martin's house?
Ans. They were firing there for about half an hour, and then in order to find out who they were I called out to them. I followed the road and when I got as far as the house of Martin I saw it was on fire already and then I asked "Who set that house on fire?", and then the reply was a blow.
Q. Who struck the blow?
Ans. I could not find out who it was because immediately afterwards it was from a poniard and then I ran away home.
Q. Were these people then present there?
Ans. The people that came in the cart; I could not know who they were.
Q. Were these people residents of the town or strangers?
Ans. I had my eyes fixed on the fire and not on the persons.
Q. Were there many persons or few around there that night?
Ans. There were plenty.
Q. Was it an usual or unusual number of people gathered there?
Ans. There were about 16 or 20 or 30 in the barrio.

By the COURT:

Q. You mean the people who live in the barrio?
Ans. The barrio has a thousand and odd people.

(No cross-examination.)
(Witness retires.)

90 And thereupon the defendant, The Royal Insurance Company, to further maintain the issues on its part, called and introduced as a witness MANUEL PEÑAS ARRERO, who, being duly sworn, took the stand and testified as follows:

(MANUEL PEÑAS ARRERO) (for def.).

(By Mr. DEXTER:)

Q. What is your name and occupation or profession?
Ans. Manuel Peñas Arrero; I am a business man.
Q. Where were you living in the month of August, 1898?
Ans. In the Coto Laurel.
Q. Were you living there on August 19th?
Ans. No, I was here in town then.
Q. Were you in the coto the night of that day?
Ans. No, sir.
Q. When did you leave there for Ponce?
Ans. About eight or ten days previously.
Q. What was the occasion of your leaving there and coming to Ponce?

Mr. BOERMAN: I object to that as it is immaterial entirely.
The COURT: Let him state what he saw; he cannot give any private reasons for what he did.

Q. State, if you know, of any disorder by which you were compelled to leave Coto?

The COURT: That is leading.

Q. Why did you leave the Coto?
Ans. Because at that time there were bands of seven or eight who went around the place.
Q. Where were these bands operating?
Ans. They were moving about from place to place in the Coto.
Q. What did they do?
Ans. They came to my house--they were threatening Spaniards—and said that by order of General So and So we had to deliver to them all we had.
Q. Was anybody else compelled to leave the Coto at that time, if you know?
Ans. That I cannot tell.

91 Q. Was any property of yours destroyed about the 19th of August, 1898?
Ans. All that I had.

Q. How was it destroyed?
Ans. As I discovered the day after it was by fire.

The COURT: That is excluded from the testimony; what he heard.

Q. Do you know of your own knowledge how that property was lost?
Ans. I have said that I knew the next day that everything was burned up.
Q. Did you see the remains of it when you went back there the next day?

The COURT: I cannot go into that; it may have been burned in some other way.

Cross-examination:

Q. Is it not a fact that at that time the state of Porto Rico in all the barrios was the same as in Coto, just as well as in the other parts?

The COURT: That is not competent. I cannot go into the discussion of the condition of Porto Rico.

Q. Is it not a fact that the state of all the barrios in the vicinity was the same?
Ans. Yes, the same as this.
Q. And the state in Coto was not different from the state in any other barrio?
Ans. I did not leave the barrio except to come here to Ponce.

(Witness retires.)

92 And thereupon the defendant, The Royal Insurance Company, to further maintain the issues on its part, called and produced as a witness JOSÉ JULIAN LEON, who being duly sworn, took the stand and testified as follows:

(JOSÉ JULIAN LEON) (for def.)

(By Mr. DEXTER:)

Q. What is your name and business and where do you live?
Ans. José Julian Leon; I am a merchant and live in the Coto Laurel.
Q. Where did you live on the 19th of August, 1898?
Ans. In the same Coto Laurel.
Q. Were you there on the day and night of the 19th of August?
Ans. Yes, at home.
Q. Will you state what happened that night?
Ans. About midnight I heard a cry of "Fire!"
Q. Were there any strange people in the barrio that you saw?
Ans. No, sir the same as ever.
Q. Do you know how the house of Mr. Francisco Martin took fire?

Ans. No, I do not know; I was living at a short distance from him.

Q. What was the condition of the barrio that evening with reference to noise or excitement?

Ans. I did not hear any.

Q. Have you ever testified before about the circumstances of that night?

Mr. BOERMAN: I object to that; it is immaterial.

The COURT: He can prove he made other statements, and can impeach him by them.

Q. Have you ever testified upon any other occasion about the circumstances of that night?

Ans. I did declare, but it was to make known that when I heard the word "fire" I saw the house of Francisco Martin afire, and about the individuals who helped me to carry provisions out into the yard.

Q. Whose provisions do you refer to?

Ans. To my provisions in my own establishment.

Q. Why did you take those provisions out?

The COURT: That is objectionable.

Q. Was there anything happening around your house that gave you an alarm?

The COURT: If that was after the fire began I do not think I can go into that.

93 Q. Did you go into the house of Francisco Martin a short time before the fire?

Ans. No.

Q. Were you never in the house of Francisco Martin?

Ans. On that day no, but at several times before. I had been living there about fourteen years.

Q. What other times before that?

Ans. I dod not remember; I know I have been there other times.

Q. Do you know what kind of stock he carried?

Ans. Provisions and merchandise.

Q. Up to the time of the fire what amount, if any, do you know that he had?

Ans. I cannot say that.

Q. Do you know if a large quantity of goods were taken out by any people a few days before the fire? Do you know if any goods were taken out?

Ans. I do not know it.

Q. Can you state whether the amount of provisions and merchandise in the store at that time was large or small?

Ans. I cannot tell; I know it was a house that used to do a large business.

(No cross-examination.)

(Witness retires.)

Mr. Dexter, in behalf of the defendant, Royal Insurance Company, announced that the defendant here rested its case.

And thereupon, to further maintain the issues on his part and in rebuttal of the evidence offered by the defendant, the said plaintiff called and produced as a witness LUIS LOPEZ, who being duly sworn, took the stand and testified as follows:

(LUIS LOPEZ) for pl'ff in rebuttal.

(By Mr. BOERMAN:)

Q. What is your name?
Ans. Luis Lopez.
Q. Where do you reside?
Ans. In the Coto Laurel.
Q. What is your profession?
Ans. Carpenter.
94 Q. How long have you lived in the Coto Laurel?
Ans. From the year 1895.
Q. Have you been living there since the month of August, 1898?
Ans. Yes.
Q. Did you absent yourself at any time?
Ans. No, sir.
Q. Were you there during the whole month?
Ans. Yes, all the month
Q. State what was the condition of the Coto during that month so far as tranquil-ity was concerned?
Ans. At the beginning and when the troops passed through there was some uneasiness, but when they had passed everything was quiet again.
Q. When did the troops pass?
Ans. They passed through there at the beginning of the month and were in camp in the neighborhood.

Cross-examination:

Q. Do you not know it to be a fact that there was a number of inknown people who vis-ted the barrio of Coto very frequently during the month of August, stealing and threatening people?
Ans. No, sir.
Q. You never saw anything of that kind?
Ans. Nobody threatened me, nor did I see anybody being threatened.
Q. What was your business during the month of August?
Ans. I was employed there in a store.
Q. By whom?
Ans. By the Sucesion de Cerellez.
Q. Where?
Ans. In the Hacienda "Ponceña." I was living in Coto.
Q. Did you see the fire that night of the 19th of August when the house of Francisco Martin was burned?

Ans. When I arrived there, it was already burned down but still burning.

Q. Where did you come from at that time?

Ans. I was sleeping there at Coto.

(Witness retires.)

95 And thereupon to further maintain the issues on his part, and in rebuttal of the evidence offered by the defendant, the said plaintiff called and produced as a witness one MIGUEL MONTENEGRO, who being duly sworn, took the stand and testified as follows:

(MIGUEL MONTENEGRO) in rebuttal.

(By Mr. BOERMAN:)

Q. State your name?

Ans. Miguel Montenegro.

Q. What is your occupation?

Ans. Laborer.

Q. Where do you work now?

Ans. I am employed now at the house od Don Eugenio Morales here in Ponce.

Q. How long have you lived in Ponce?

Ans. Eight months.

Q. Where did you live before you came to Ponce?

Ans. In the Coto Laurel.

Q. How many years did you live there?

Ans. Four years.

Q. Did you live there during the month of August, 1898—during the invasion?

Ans. Yes.

Q. Did you live there during the whole month?

Ans. Yes.

Q. Tell what was the condition of the Coto so far as tranquil-ity was concerned during that month?

Ans. The whole month was tranquil.

Q. Did you see any disturbance, or anything committed there?

The Court: He says it was tranquil.

Cross-examination:

Q. And during all the month of August you never heard the cry of "Fire" in the Coto?

Ans. No, sir, until the 29th of August, at night, the next day I heard some shouts; it was from 10 o'clock on.

Q. What day was it that the house of Francisco Martin burned?

Ans. The 29th, or the morning of the 20th.

Q. Was that the morning that you heard the shouts of "Fire," the morning or the night that the house of Francisco Martin burned?

Ans. No, sir; the next day at 10 o'clock, between 10 and 11.

Q. How do you know it was the night of the 29th?

Mr. BOERMAN: I think he said the 20th.

Q. How do you know that it was the night of the 20th that that fire took place?

96 Ans. Let me tell you now: I am out of my way: it was on the 19th and the 20th.

Q. Where were you that night?

Ans. Sleeping at home.

Q. Where is your home?

Ans. About two cuerdas from the house of Pancho Martin.

Q. Were you working for Don Pancho then?

Ans. No, sir; I was working for the hacienda.

Q. Do you know whether any people took away any provisions from the store of Don Pancho any night before that?

Ans. I do not know; I cannot say.

Q. Do you know of your own knowledge whether provisions were taken away from his place.

Ans. No, sir; I do not remember; I saw nothing of that.

Q. You say there was no riot or commotion at all there at that time?

Ans. No, sir.

(Witness retires.)

Mr. Boerman on behalf of the plaintiff here announced that the plaintiff closes his rebuttal.

The interpreter having finished the translation of the will of Francisco Martin, which was offered in evidence in the beginning of the trial, and which was ordered by the court to be re-translated, at which time it would be admitted in evidence (see page 2 of this record) the plaintiff, to maintain the issues on his part, offered and introduced said will and translation into evidence, which translation, literally copied, is in words and figures as follows, to wit:

"*Nuncapative Will.*

No. 543.

In the city of Ponce, island of Porto Rico, on the 10th of October, 1898, before me Lawyer Rosendo Matienzo Cintron, notary of the illustrious college of this province, with residence and open office in this city, and before the witnesses which had been asked and called for this act, and who shall be named at the end, there appear:

Don Francisco Martin y Llorenzo, married, of this vicinity, property owner, sixty five years of age, whom I know and I certify to his profession and residence; being in his house located in Comercio street of this town, number 21, where I have repaired in virtue of an express request on account of the appearer being sick in bed, but in his entire and perfect senses, and whom therefor- I consider to be

in his legal capacity necessary to make a will, after his showing his personal pass-port of the sixth class number 235 issued on the 5th of September last by the collector of taxes of this city, and after being assured by the witness- that they know the testator, and
97 that they also consider him with capacity sufficient for this execution of a will, the same states:

That being desirous to formalize his last will he executes his present open will in the form contained in the following clauses:

1.

He declares that he was born in the town of Notaez, province of Granada, Spain, in which parish he was baptized; that he is the legitimate son of the legitimate matrimony of Francisco Martin y Romero and Luisa Lorenzo, who were born in said town but who are now dead, and that he professes the Catholic and apostolic religeon.

2.

That after his death his body must be buried in the Catholic cemetery of the parish where his death occurs, with the exequies and suffrages for the repose of his soul, as shall be directed by his widow and eldest son, Francisco Ruperto.

3.

He declares that he is at present married to Guadelupe Vasquez y Alvarado, from which matrimony he has had and reared six children, named Francisco Ruperto, 27 years of age, Encarnacion, 24; Arturo, 22; María Inés 20; Juan, 18; Francisca, 16, all of whom are unmarried and living in the city.

4.

He declares likewise that if at the date when this will has to take effect there be established or subsisting any compulsory legacies in favor of beneficent institutions, or for other pious objects, he leaves to them and for once only, what corresponds to them by law.

5.

He also declares it not being possible for him at this moment to make an exact account of his property, he confides or entrusts this duty to his spouse and executor to be named hereafter, who, on account of their perfect knowledge of all his goods shall detail them in due time with due accuracy.

6.

The debts for or against which the testator has pending collection or payment at the time of his death, it is his will that they be declared in due time by his spouse and executor in as much as they have a perfect knowledge of the state of business of the grantor.

7.

The testator makes known that neither he nor his spouse brought anything to the marriage fund when they contracted matrimony; therefore, all the property which may be in existence as belonging to them after his death must be considered as *bienes gananciales*.

8.

He appoints as his testamentary and faithful executor of his will his eldest son, who is of age, Francisco Ruperto Martin y Vasquez, upon whom he confers the most ample and solemn power in order that when the death of the testator occurs he may proceed to execute this will in all its parts, for which object he grants to him the legal time, and it is his will that it be extended to the time required.

98

9.

He elects and appoints as his private accountant his friend, Justo Barros y Soler, with the special charge to carry out the operations of inventory, appraisement, liquidation, division and adjudication of the goods and property found or existant at the death of the testator, extra-judicially for the sake of saving expense; although he must immediately submit said operations to the approbation of the courts if there be then some of the heirs who are minors.

10.

The testator by these presents institutes and appoints as his only and universal heirs of all his property his said son, Francisco Ruperto, Encarnacion, Arturo, María Inés, Juan and Francisca Martin y Vasquez, in order that those who may exist may enjoy and relish it in equal parts, with the blessing of the Almighty and his own, without prejudice to the usufructory quota to which the spouse of the tes-ator has a right according to the provisions of article 834 of the Civil Code.

11.

And lastly, the testator revokes, annuls and cancels every will or testament which he may have granted in any form before the present one, which is the only one he wants to be kept, fulfilled and executed as his last and deliberate will in the most legal and solemn form established by law.

Thus he grants it in the presence of the witnesses residing in this city, who are of age and known to me, and who are without legal blemish, to wit: Eduardo Salich y Simonpietri, Federico Mórin de Jesús, and Juan Menchaca y Lugo. And after being duly informed of the right which the law concedes to all of them to read this will by themselves, which right they renounced, I proceeded, in accordance with their wish, to read it wholly to them, the contents of which is ratified by the tes-ator who signs with the witnesses in a sole act at four p. m., and I certify to the whole contents of this will,

as well as to the fact that all the formalities described in the civil code now in force in this province have been complied with. The above is certified to *my by eht* undersigned notary of the illustrious college of this province.

(Signed) FRANCISCO MARTIN.
EDUARDO SALICH.
FEDERICO MORIN.
JUAN MENCHACA Y LUGO.

(Signed, signeted and rubricated by)
Lawyer ROSENDO MATIENZO CINTRON.

Notes.

On the 13th of January, 1902, as a substitute for the principal I issued a first copy to the heir, Francisco Ruperto Martin y Vasquez in three sheets of common paper, to which I certify.

(Signed) ACOSTA. [RUBRIC.]

On the 8th of March, 1902, as a substitute of the principal, I issued a copy of this will to Antonio Catinchi y Crusalvi, in three sheets of common paper, to which I certify.

(Signed) ACOSTA. [RUBRIC.]

99 It corresponds faithfully with its original under the number 543 found in the protocol of public instruments of the referred to year of the office of this *notaray*, which is at present under my charge, because the proprietary notary is absent on leave.

In witness whereof, and at the request of the heir, Francisco Ruperto Martin, I issue this second (for him) copy, to which I put a flourish, signet and sign in three sheets of common paper at Ponce on the 12th day of May, 1902.

(Signed, signeted, rubricated) ÁNGEL ACOSTA.

(There is a fifty cent revenue stamp cancelled by the notary's seal.)

The foregoing is a true and faithful translation of its original in Spanish: to which I certify.

(Signed) Z. VALL SPINOSA,
Interpreter, U. S. Dist. Court for Porto Rico."

Mr. DEXTER: The defendant now offers in evidence the record of the court martial proceedings held in the city of Ponce, September 8th, 1898.

Mr. BOERMAN: I object to the introduction of this document because it contains the finding of a military commission, and not of a court, and 2nd: because it is not a certified copy of any judgment.

The COURT: Under what view do you think that is competent?

Mr. DEXTER: It is to show that there were parties accused of this very crime.

The COURT: I do not think it is competent; I do not know of

any rule of law by which a proceeding of a court-martial is competent in a court. I sustain the objection to it.

Mr. DEXTER: Please save an exception for the defendant to the ruling.

And thereupon, after argument by the attorneys for the plaintiff and for the defendant, the court charged the jury as follows, to wit:

100 RUPERTO MARTIN, Executor of the Will of Francisco Martin, Deceased, *vs.* THE ROYAL FIRE INSURANCE COMPANY. } Tried in Ponce at the May Term of the Court, May 19th & 20th, 1902.

Charge of the Court.

GENTLEMEN OF THE JURY: As you have already learned during the progress of this case, this is an action upon a fire insurance policy, issued by the Royal Fire and Life Insurance Company to Francisco Martin, for loss by fire of the property insured. The defendant first puts in issue by its answer the question whether there was any insurance, it being shown that the policy was lost. It is for you to determine from the testimony whether that insurance existed. The defendant, upon notice from the plaintiff, has produced a form of the insurance. It is before you as testimony. The evidence tends to show that this insurance upon the property that was burned was first taken out on the 12th of March 1877, for one year; that it was renewed from year to year and that the last renewal was on the 12th of March 1898 to the 12th of March 1899. The testimony tends to show that the property was burnt on the 19th and 20th of August, 1898. There is testimony showing that the insured died in October, 1899, and this action is brought by his executor to recover the amount lost by reason of that fire on the policy of insurance.

You are first to find then from the testimony—because it is your province to judge of what is proven in the case—whether that insurance existed, or not. If that insurance did exist, and this property during the period covered by it was destroyed by fire, then, unless the insured had failed in some way to comply with some condition in the policy required upon his part to be complied with, the plaintiff is entitled to recover the loss that accrued by reason
101 of that fire. It is your duty to accept the law, not as stated to you by counsel, however eminent in the profession they may be, but as given you by the court. Even though that statement of law may be erroneous, you must accept it as the law of the case. It is your province, however, to judge and determine what is proven in the case from the testimony. I will not detail it to you, gentlemen, as you have listened carefully to all of it.

You cannot consider, if you should find in favor of the plaintiff, any loss of any property not covered by the policy of insurance, except as I will presently say to you in reference to the stock of goods that it is claimed was insured.

So far as the real-estate was concerned, the insurance was upon a building built of timber and roofed with galvanized iron, situated in the barrio of Coto, in the district of Ponce, and occupied partly as a dwelling and partly as a shop. You are confined, in your consideration of this case, to that real-estate. If a new building was built or added to the building that was insured, you cannot consider any loss of the new building, and you can only consider the loss arising from the destruction of the real-estate that in point of fact was insured. The insurance also covered a stock of goods, or, it is claimed it covered the stock of goods in the store-house. If you find from the evidence that that insurance existed, I say to you as a matter of law that the insured had the right to sell and re-purchase, by way of substitution, a stock of goods, and that a policy upon a stock of goods, as a matter of law, covers afterward acquired and substituted goods. This is necessary from the nature of the business. No one would insure a stock of goods unless he had the privilege to sell and rebuy, and hence this insurance, if it existed, covered the stock of goods in that store at the time of the fire.

102 If you find for the plaintiff in this case you would find the damage that accrued by reason of the destruction by fire of the real-estate as it existed, and its value at the time of the fire as covered by the policy of insurance; as to the goods, you would find the loss that resulted by reason of the destruction by fire of the stock of goods on hand and embraced in this policy of insurance at the time of the fire, consisting of provisions and groceries, that was insured. Whatever was on hand that may have been substituted of that stock of groceries and provisions at the time of this fire, you would find the value in damages by reason of its loss. There is testimony tending to show what the value of that property was in pesos. As a matter of law a peso is worth sixty cents, so that in estimating what the value of that property was in pesos—as your verdict must be, if you find for the plaintiff, in dollars and cents—you will estimate, in considering the testimony as to pesos, you will estimate it at sixty cents American money to the peso.

The defendant has not only presented the defense that it never promised and never insured this property, as claimed in the declaration, but that after the fire there was a release of all claim for damages by reason of the loss of the property by the fire. There is no proof, no evidence, as I recollect it, of any agreement. There are certain circumstances that were allowed to be proven in the case, and if from these circumstances, from the evidence, you believe there was a settlement of this matter by the insured after the destruction of the property, upon a sufficient consideration, you would find for the defendant. Otherwise, so far as that defence is concerned, you would find for the plaintiff.

Another defense presented in this case is that the stock was removed from the store without permission. There is no evi-

103 dence as to it.

Another defense is that there was no notice given to the company—the underwriters—of this loss within fifteen days, as pro-

vided in one of the conditions of the policy, and that no proof was furnished to the company of the loss and no notice within fifteen days. It is shown in the testimony that this was a total loss of the property. There is no dispute in reference to that. It was a reasonable condition, and as such binding upon the insured, that he should notify the company, in writing of this loss and that he should furnish proofs of it. That was a reasonable condition and binding upon the party. That condition, however, in the policy was for the benefit of the insurer—for the benefit of the company. Now, the company had the right to waive this condition if it saw fit to do so. It could do so either by an express agreement or by conduct in reference to it. The testimony tends to show that it had a local agent in Ponce, near where this fire occurred. The testimony tends to show that it had a general agent for its business in Porto Rico in San Juan. The testimony tends to show that when the insured reported this loss verbally to the local agent, he referred the insured to the general agent in San Juan. A resident general agent, gentlemen, of a foreign insurance company, with general charge of its business and the right to manage its business generally in the district where he resides, has the power in law to waive the conditions in a policy as to notice of the loss, or as to the presentation of proofs as to the loss. He may waive it by conduct, as by the payment of what he thinks should be paid on account of that loss. That is a waiver of any production of proof as to the loss or of any
104 notice, and if a general agent has that power and acts upon an oral notice from the party that the loss has occurred in such a way as to induce that insured party to believe reasonably that no other notice is required of the loss, and that no other proofs are required, then that, in law, is a waiver of that notice or of proofs. As a matter of law, when this general agent was applied to and told of this loss, and was informed that it was a total loss, if you believe from the testimony that he informed the insured that he would report it to the company and would notify him if they determined to pay, and no further notice was required by him, or any proofs of loss were required by him except being informed that it was a total loss of the property, that, in law, was a waiver of the production by the insured to the general agent of the company of proofs of the amount of that loss.

If you believe from the testimony that the company by their general agent induced the insured—reasonably induced him, that is, that the conduct was such that a man of ordinary intelligence would reasonably infer from it—that no other notice or proofs were required, then it was a waiver of any other proofs or notice. If, for instance, the company, being notified orally of the destruction of the property, if they refused to pay any loss upon a totally different ground than that of no proofs of loss being presented to them, then that was a waiver, in law, of any proofs of loss being presented.

Another defense presented is that the property passed by mortgage or transfer without the consent of the company. I have no recollection of any testimony on that point.

Another defense presented by the answer is that the loss was caused by invasion, or occurred during invasion, war, riot, etc. I will read to you a part of the condition of the policy relative to this matter, although the entire policy and all its conditions is
105 before you as testimony. It provides, "This policy does not cover loss or damage by fire happening during any invasion by foreign enemy, during rebellion, insurrection, riot, civil commotion, military or usurped power or martial law within the country or locality within which the property insured is situated, unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with, or occurred from a cause or causes independent of the existence of such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law."

The defense mainly relied upon here is that this loss occurred during an invasion, riot, civil commotion, military or usurped power, or martial law. A fair construction of that condition in the opinion of the court is that that must, in order to excuse this company from liability in case of loss of property by fire, that that invasion by foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, must have been occurring within the section of the country where this loss occurred, or within the locality, and within such a radius of country where the loss occurred that danger arose to property by reason of the existence of that rebellion, invasion, insurrection, civil commotion, military or usurped power, or martial law. And I further tell you, gentlemen, that if you believe from the evidence that this destruction of this property did not occur from any of these causes, and occurred from a cause independent of the existence of any foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, then you should find so far as this defense is concerned for the plaintiff in damages whatever you think may have been his loss. This is a reasonable construction, as the court thinks, of this and these conditions of the policy.

106 A civil case like this one, is unlike a criminal case. You act *upon* what you believe from the facts, from the testimony,—you act upon a preponderance of the testimony in the case. If you believe from the testimony that this insurance existed upon the property named in this form of policy which is produced to you, and if you believe from the evidence that the real-estate, the property named in the policy, was destroyed by fire, and if you believe that the stock of goods, although it may have been changed in the course of trade by substitution,—if the stock of goods on hand at the time of the fire was destroyed by the fire, then you would find for the plaintiff in damages the reasonable value of that real-estate that was insured and of that stock of goods that was insured and that was on hand—the existing stock, the substituted stock—if it had been substituted to any extent—at the time of the fire, provided, however, if you believe from the testimony, gentlemen, that the plaintiff failed to give written notice to the company of this destruc-

tion of the property, or to furnish proofs within the time named in the policy of the loss of the property, and that there was no waiver either by agreement or by conduct upon the part of the company, or its general agent, of further notice or of the production of proofs of loss, then you will find for the defendant; and further, gentlemen, if you believe from the testimony that this loss occurred during invasion, rebellion, riot, civil commotion, and other states of case as set out in the policy existing in this locality where this store and real-estate was located, or in that section of the country, and that it occurred by reason of the existence of that state of case, why then, if you believe it did occur from that state of case in that section where the loss occurred and by reason of it, you would find for the defendant.

107 Your verdict should be, if for the plaintiff, "We, the jury find for the plaintiff," so much in damages, not exceeding the amount claimed in the declaration, which, I believe, is twenty thousand dollars, and not exceeding the amount insured upon the property, and not exceeding also the amount of loss by the defendant. If you find for the defendant your verdict is simply: "We, the jury, find for the defendant."

If you should find for the plaintiff, gentlemen, you may or not, in your discretion, count interest upon the amount of this loss, if you find that the property had been insured, as I have indicated, estimating the interest at the legal rate of six per cent. you may allow interest at that rate upon whatever amount you may find was the loss from the time when the defendant refused to pay anything on account of that loss. Or, you may, gentlemen, in your discretion only find interest from the time when this suit was brought. That is a matter in your discretion. You may not find any interest at all but merely find so much in damages.

Gentlemen (addressing the attorneys) is there anything further you wish me to say?

Mr. DEXTER (of counsel for defendant): Defendant excepts to that part of the court's charge wherein it was stated that the jury might find for the plaintiff, and the plaintiff was entitled to recover unless the insured failed to comply with some condition precedent. The defendant thinks that is limiting the conditions to conditions precedent.

The COURT: I will amend that by making it "some condition in the policy."

Mr. DEXTER: Defendant excepts to each and all parts of the charge whereby the court undertook to charge the jury that

108 they might find in excess of the face value of the policy.

The COURT: I did not do that. It cannot exceed the amount insured. There is nothing in the charge of that kind.

Mr. DEXTER: I thought I heard your honor say "not to exceed twenty thousand dollars"?

The COURT: Yes, and the other was connected with it: "Not to exceed the amount of twenty thousand dollars, and not to exceed the amount of insurance on the property." I coupled that with it.

I also coupled with it, "the actual loss that occurred." (Addressing the jury) You are limited to the actual loss that occurred and also limited to the actual insurance on the property, not exceeding, in any event, twenty thousand dollars.

Mr. DEXTER: I would like to ask the positive charge of the court that there could be, under no circumstances, a verdict for more than the face value of this policy, which is £1600.

The COURT: I think that is already in the charge.

Mr. DEXTER: Defendant also desires to except to that part of your honor's charge where it is stated that it was reasonable that defendant should furnish proofs of loss, and because the charge does not specify the time limit in accordance with the conditions of the policy, which was fifteen days.

The COURT: I think that was stated in the charge. I am very sure that in the charge I mentioned the fifteen days required in the policy.

109 Mr. DEXTER: With reference to that part of your honor's charge to the effect that a resident general agent of a foreign insurance company has power, in law, to waive conditions as to loss or presentation of proofs, the defendant excepts—1st: by reason of the statement of law therein, and 2nd: under the testimony in this case, that by a letter which was offered in evidence.

The COURT: You can only say that you desire to except to that part of the charge. Do not detail the testimony.

Mr. DEXTER: I except to it then.

The COURT: I over-rule the exception.

Mr. DEXTER: Also to that part of your honor's charge to the effect: "If he gives"—referring, as I understand it, to the agent—"if he gives the insured to understand that the loss will not be paid, that is a waiver of proof." We ask that be modified to: "unless the refusal was given before the fifteen days expired."

The COURT: That I over-rule,—but my statement, as I recollect it was that "unless there was a refusal to pay the insurance upon some other ground, than lack of proof of loss."

Mr. DEXTER: Defendant would ask the court charge that that condition would be binding as to furnishing proofs of loss within the fifteen days and would preclude the plaintiff from recovery if the proofs of loss were not furnished within that time.

The COURT: I will over-rule that.

110 Mr. DEXTER: Please save an exception.

Mr. DEXTER: Defendant also excepts to that part of the charge which states substantially as follows: "A fair consideration of the condition—(referring to the condition of the policy which is contained, I think, in part 3, referring to the invasion, riot, etc.) is, in order to excuse from liability, that the invasion (and repeating the other words in that connection) that the invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law must have been occurring in the section of the country or the locality where the fire occurred, and within such a radius of country that danger arose by the existence of such inva-

sion," and naming the other circumstances referred to in the policy.

The COURT: I over-rule that.

(Mr. Dexter takes an exception.)

Mr. DEXTER: Defendant also wishes to except to that part of the charge of the court to the effect that "if you believe that the loss did not occur from these causes." The objection being that defendant asks that the charge instruct the jury that they shall find for the defendant if they find that the loss occurred during the existence of any of these conditions——

The COURT: This cause or any of them.

Mr. DEXTER: Defendant asks that the charge be modified to this effect: "If you believe that the loss occurred during the existence of invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law then you will find for the defendant." In other words, not making that the cause, but if it is shown that those circumstances existed that then——

The COURT: The objection you make is, if that is modified as you wish—but it does not fix any locality or section of the country.

111 Mr. DEXTER: Your honor has already passed on that in this prior objection, but I refer now to the other feature as to whether the fire should prove to be the result of any of these conditions mentioned which would be the cause. We object to making——

The COURT: I have told the jury that if the fire arose by reason of any of these causes existing in that section or locality of the country.

Mr. DEXTER: That is the part defendant excepts to.

The COURT: You may take an exception to that. I understand you are claiming, for instance, if the Germans had invaded San Juan and got into San Juan, and if this property in this place had been destroyed by a boy dropping a match, that the company would be released. The court has not that view.

Mr. DEXTER: We also except to that part of the charge as to the proof of the loss.

The COURT: Well, save an exception.

Mr. DEXTER: I failed to hear any reference to the alienation of the stock. The defendant would ask the court to charge that if the jury believes from the evidence that if at the time of the fire or prior thereto the title to the stock of goods which had been insured had passed out of Francisco Martin and into another person or other persons, the plaintiff herein could not recover.

The COURT: That I could not give because the testimony does not support it. There is no testimony that there has been an
112 alienation to anybody else. If to a partner, however, the partner has an interest in the entire stock of goods insured.

Mr. DEXTER: We simply ask for a modification of the charge to state that if there was an alienation.

The COURT: I do not think there was any testimony to support the statement that there was any alienation.

Mr. DEXTER: Defendant makes that request upon the testimony of the witness——

The COURT: Do not state the testimony. Save an exception. Gentlemen of the jury, retire and make a verdict.

Note.

(The jury retired and shortly after returned and requested that certain parts of the charge of the court be read to them, whereupon the court ordered the stenographer to read the whole charge which he did up to the point where the defendant's counsel began the statement of his exceptions. Mr. Dexter, counsel for defendant, then requested that his exceptions to the charge and requests for modifications be read, and thereupon the court ordered that certain parts thereof, including only the parts showing the modifications of the charge be read and that requests of counsel and their exceptions be omitted, which was done. The main body of the charge as it appears above is the charge made to the jury including the modifications and changes which were written in at their proper places at the time they were made.)

113 And thereupon, on the same day, after the jury had retired and had agreed upon their verdict, they returned the same into court, which verdict being read by the clerk of the court was as follows:

"We, the jury, find for the plaintiff in damages the sum of seven thousand six hundred and twenty three dollars ($7623.00).

FRANCISCO B. BASORA, *Foreman.*"

And thereupon the defendant, by its counsel, asked the court to instruct the jury to return to their jury-room and make a separate finding of the damages separately upon the building and the stock of goods, which request the court refused, and to which ruling of the court the defendant then and there excepted.

114 I, H. P. Leake, do hereby certify that I am the official stenographer of the district court of the United States for Porto Rico and that I acted as such in the trial of the above entitled cause; that the foregoing transcript of the testimony numbered from pages 1 to 64 inclusive, is a true, full and complete report of all the evidence in said cause and contains, with the exhibits, records and documentary evidence therein referred to and identified, all of the evidence offered, given or introduced in the said cause by the respective parties upon the trial thereof; all of the objections and motions of the said parties thereto, or any part thereof; all of the rulings of the court to such objections and motions, and all exceptions of the parties to such rulings, as well as the charge of the court

to the jury, the objections thereto, the rulings of the court on such objections and the exceptions to such rulings.

Signed this 19th day of June, 1902.

H P. LEAKE,
Official Stenographer United States District Court for Porto Rico.

115 I, William H. Holt, do hereby certify that I am the judge before whom the above entitled cause was tried; that H. P. Leake was the official stenographer of the court who reported said cause; that the annexed and foregoing short-hand report of the evidence, duly certified to by the said official stenographer, is the report of the evidence in said cause and contains, with the records, exhibits, and documentary evidence therein referred to and identified, all of the evidence offered, given or introduced in said cause by the respective parties upon the trial thereof; all objections and motions of the said parties thereto, or any part thereof, and all rulings of the court upon such objections and motion, and all exceptions to such rulings, as well as the charge of the court to the jury, the objections thereto, the rulings thereon and the exceptions to said rulings; the said report with this certificate is ordered to be filed and made a part of the record in said cause.

Signed this 20th day of June, 1902.

WM. H. HOLT,
Judge United States District Court for Porto Rico.

116 I, William H. Holt, judge of the district court of the United States for Porto Rico, before whom the above entitled cause was tried, certify that the above and foregoing long-hand transcript certified to by the official stenographer of this court in the trial of said cause, contains all the evidence offered, given or introduced in said cause; all the objections and motions thereto, and all the rulings of the court to such objections and motions, and all of the exceptions to such rulings; and the charge of the court to the jury the objections thereto, the rulings of the court to such objections and the exceptions to such rulings, and the same is ordered to be certified to as a part of the record of this cause.

And the said defendant, Royal Insurance Company, on the 20th day of June, 1902, and within the time allowed by the court, thereafter tendered this, its bill of exceptions, it having been reduced to writing and all of the exceptions taken by the defendant during the progress of said trial being embraced therein, praying that the same be signed, sealed and made a part of the record of this cause, which is accordingly done this 20th day of June, 1902, *nunc pro tunc*, as of the 19th day of May, 1902.

WM. H. HOLT,
Judge of the District Court of the United States for Porto Rico.

[SEAL.]

117 In the District Court of the United States for Porto Rico.

I, Ricardo Nadal, clerk of the district court of the United States for Porto Rico, hereby certify that the above and foregoing transcript, containing 116 pages from 1 to 116 inclusive, is a true and correct transcript of the record and of all pleadings, documents, exhibits, papers, orders, judgment, proceeding and evidence as contained in the bill of exceptions, had or conducted in the foregoing case wherein Ruperto Martin, executor of the will of Francisco Martin, deceased, is plaintiff, and The Royal Insurance Company, defendant, as the same remains upon the files and of record in the said court.

In witness whereof, I have hereunto set my hand officially and affixed the seal of said court at the city of San Juan, Porto Rico, in said district this 28th day of June, 1902.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk U. S. District Court of Porto Rico.

Endorsed on cover: File No. 18,606. Porto Rico D. C. U. S. Term No. 86. The Royal Insurance Company, plaintiff in error, vs. Ruperto Martin, as executor of the will of Francisco Martin, deceased. Filed July 12, 1902.